

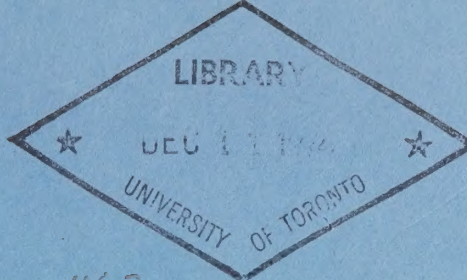
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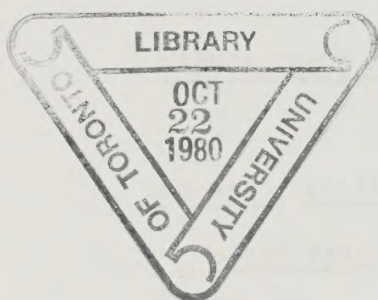


Monthly Report

ONTARIO, LABOUR RELATIONS BOARD

Report.

CITED [1974] OLRB REP.



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11. Having carefully reviewed these representations we find the cases cited to us are already distinguishable from the facts presented before us in the instant application where the applicant specifically pointed out to the trade union that its interpretation of the relevant legislation was in error. In our opinion, the initiation of strike action (as in the case of a lock-out is a serious matter and not an activity to be entered upon lightly. In this regard, the Legislature has seen fit to provide certain statutory pre-requisites and to which the parties are expected to rely upon in assessing their labour relations position. Although we agree with counsel that this Board is generally faced with interpretations made by laymen rather than lawyers, it is clear that in the instant case, the opinion emanated from an International Representative relatively skilled and experienced in matters coming before this Board. Simply stated, we find that Mr. Harkness erred in his interpretation of the relevant legislation and we are not disposed, in the particular circumstances of this case, to relieve the respondent trade union from the statutory results flowing from the employees' subsequent unlawful activities.

12. Counsel for the respondent alluded to other matters which the Board should consider in these proceedings. In this regard he asked us to note that although the employees have not returned to work they were in facts as of the date of this application and as of the date of hearing, engaged in a legal strike. He argued therefore that the situation was analogous to the case where the employees had returned to work as of the date of the hearing, where in the absence of evidence disclosing a prior pattern of illegal behaviour and where the employer has no reasonable fear of future similar interruptions in his operations, the Board would decline to issue the declaration. (In this regard, see the Ball Brothers Ltd. case (1957) CCH Canadian Labour Law Reporter, Transfer Binder, '55-'59 ¶16,091 C.L.C. 76-576). As a final submission, counsel for the respondent argued that, in any event, there were alternative legal remedies available to the applicant.

13. In our opinion, both of these submissions have been exhaustively dealt with in the Quigley Construction Company Limited case, OLRB M.R. May 1972, p. 526 where, as in the instant case, a declaration was sought against the trade union in circumstances not entirely dissimilar to those presently before us. For the reasons as set out in that case, we accordingly reject the latter submissions as presented by counsel in this regard.

14. Accordingly, pursuant to the provisions of Section 82 of the Act, the Board declares that the respondent, United Brotherhood of Carpenters and Joiners of America, Local Union 2759, did call or authorize an unlawful strike against the applicant on July 5, 1974.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: July 29, 1974.

1. Having regard to the evidence in this matter I find that the respondent did engage in a strike on July 5, 1974, contrary to the provisions of Section 63(2)(b) of the Ontario Labour Relations Act.

2. The evidence clearly establishes that the strike took place one day earlier than legally permissible because of a faulty computation in determining the legal strike date. Having regard to the totality of the evidence in this matter leading to the advice from Thomas Harkness, International Representative of the respondent, with regard to the July 5th date instead of July 6th, I am satisfied that the mistake in dates was entirely innocent and in fact the computation that was used to determine the faulty date was understandable and in fact such computation was a common sense layman's computation. However, we are here concerned only with the strict legal computation and as a result we have to find that the respondent was legally wrong in such interpretation.

3. In view of the foregoing and having regard to the discretion vested in the Board under Section 82 of the Act, I would use such discretion in not making a declaration that the strike engaged in by the respondent on July 5, 1974, was illegal. I would dismiss this application.

5529-74-R: Toronto Typographical Union No. 91 (Applicant) v. SYSTEMS EQUIPMENT LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members P.J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: James Buller and Michael Diamond for the applicant; R.C. Filion, D.I. Wakely and E. Lynch for the respondent; no one appearing for the objectors.

DECISION OF D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.:
August 7, 1974.

1. Subsequent to the taking of a representation vote on June 18, 1974, in this matter the applicant has made certain allegations concerning the conduct of the employer in this matter and has requested that the Board certify the applicant pursuant to section 7(4) of the Act.

2. At the hearing in this matter the applicant presented evidence to the Board concerning a speech made to the employees in the respondent's plant on Friday afternoon, June 14, 1974, which was some eight hours prior to the commencement of the silent period directed by the Registrar with respect to the representation vote conducted herein. The basis of the applicant's complaint in this regard is that certain submissions made

by Mr. Lynch, the Eastern Division Manager of the respondent, about the applicant trade union were untrue and intended to mislead the employees from voting in favour of the applicant trade union. The applicant takes exception to three such statements. First, that the employees were getting wages and fringe benefits equivalent to or better than other employees organized by the applicant, and that consequently if the trade union got in the only difference would be that the employees would have to pay union dues to obtain such benefits. Secondly, Mr. Lynch indicated that if the union negotiated a closed shop then the union could require the employer to discharge any employee who refused to join the trade union. Thirdly, Mr. Lynch also indicated that the proposed increase was being withdrawn because of the activity of the applicant union, and further that if the union were certified any wage increase might be less than previously announced.

3. It is clear that the applicant has not established that the statements made by Mr. Lynch were of a coercive nature or such as to cause any undue influence on the employees to whom they were addressed. The applicant can only succeed if we were to conclude that misleading statements by an employer to a captive audience are grounds for voiding the result of a representation vote. This Board has on numerous occasions refused to accept false or misleading statements made in support of one side where the other campaigns either for membership or for representation votes. Such untrue statements are only of consequence if they coerce or unduly influence the employees to whom they are told. On the other hand if the employee is capable of evaluating the statements made then the Board has refused to give these statements any affect. In the present circumstance even if we were to find that the statements made by Mr. Lynch were untrue it is difficult to see how a reasonably intelligent employee would be incapable of evaluating the claims made by Mr. Lynch. Accordingly, we cannot find that the conduct of the employer in making the speech to the employees was such as to affect the outcome of the representation vote.

4. The fact that the speech to the employees was made at a time which did not allow the applicant time to rebut the claims made by the respondent employer before the silent period commenced is, of course, something to which no weight can be given. The timing of any appeal where there is a public line is a matter of tactics and is a necessary result of setting a time limit.

5. On the taking of the representation vote directed by the Board not more than fifty per cent of the ballots cast were cast in favour of the applicant.

6. The application is therefore dismissed.

. . .

DECISION OF BOARD MEMBER P.J. O'KEEFFE: August 7, 1974.

1. In accordance with the Board's direction of May 28, 1974, a representation vote was held in this matter on June 18, 1974. The question put to the employees was as follows: "In your employment relations with Systems Equipment Limited, do you wish to be represented by Toronto Typographical Union No. 91". The result of the vote was thirteen (13) votes for the applicant union and fourteen (14) votes against the applicant union.
2. Subsequent to the representation vote the applicant union made certain allegations concerning the conduct of the employer, more specifically against a speech made by Mr. Ernest Lynch, Eastern Division Manager of the respondent employer. The union submitted that such speech delivered to a "captive audience" of employees prior to the vote was of such nature that as a result the employees were not likely to express their true wishes in the representation vote, and therefore the Board should certify the applicant union without the taking of a representation vote pursuant to section 7(4) of The Labour Relations Act.
3. The evidence in this matter establishes that the respondent employer called a meeting of his employees on the premises of the employer during the employees working hours. During this meeting Mr. Ernest Lynch, Eastern Division Manager of the respondent, addressed the employees from a prepared speech. He said among other things that the employees were now getting wages and fringe benefits equivalent to or better than other employees organized by the applicant union, and that consequently, if the union got in the only difference would be that the employees would have to pay union dues for the same kind of benefits that they now have. Further, he said that if the union negotiated a closed shop agreement, that the union could require the employer to discharge any employee who refused to join the union. He indicated that a previously proposed wage increase was being withdrawn because of the applicant union, and if the union were certified any wage increase might be less than previously announced by the employer.
4. The Board's initial decision in this matter dated May 28, 1974, wherein the majority of the Board ordered a representation vote was a decision in which I dissented, and in which I wrote a minority decision in which I dealt at length with the reaction of this employer towards the unionization of his employees. Notwithstanding my minority decision in which I felt that any representation vote ordered in this case would not disclose the true and voluntary wishes of the employees, I now feel impelled to deal with the continued anti-union activity of the employer prior to the conduct of the representation vote in this matter. The evidence discloses that the employer called a meeting of the employees on June 14, 1974, at about 3:45 p.m. Prior notice of the calling of this meeting was posted on the bulletin boards of the employer on June

13, 1974. At the opening of the meeting, Mr. Lynch told the employees they did not have to stay at the meeting and at that time he paused in his remarks to see if anyone wanted to leave. None left. In view of the generous offer of management to do so and the dramatic pause of Mr. Lynch to allow for any possible shuffling out of the meeting by some brave soul among the assembled congregation, it is not surprising that no employees left the meeting. This meeting called on company time, during the working hours of the employees, and during a period when in fact the employees continued to be paid by the employer, and called by the employer via an official notice of meeting on the company's bulletin board, was unquestionably a captive audience meeting. Keeping in mind the previous evidence in this case, related in my minority decision of May 28, 1974, it was disclosed that employees testified that the employer had created an anti-union atmosphere in the plant that resulted in their being frightened, tense, threatened, distressed, personally insulted, degraded and cold shouldered, is nothing less than sheer hypocrisy or at best a dare on the part of Mr. Lynch to throw out the suggestion that they did not have to stay at the meeting. An employee would indeed have to be reckless or of exceptional courage to leave that captive audience meeting during the dramatic pause in the boss's remarks. An employee's very livelihood can be terminated by an employer almost at will, and for an employee at this meeting to leave at that time would clearly identify him as a supporter of the union. We would be naive indeed to view the invitation to leave as a demonstration of the voluntary nature of this meeting.

5. Turning to what was said at this captive audience meeting, first that the employees were now getting wages and fringe benefits equivalent to or better than other employees organized by the union. This statement was untrue, as established by the applicant in evidence, and in any event made at a meeting where it would be impossible to debate the merits of the statement. Second, Mr. Lynch said that if the union got in the only difference would be that the employees would have to pay union dues for the same kind of benefits that they now have. This latter statement in my opinion is coercive in the extreme because it carries within it a threat not to bargain with the union, if certified, for improvements in employees' benefits. Third, Mr. Lynch said that if the union negotiated a closed shop agreement that the union could require the employer to discharge any employee who refused to join the union. A closed shop agreement is one in which the union has control over the hiring of employees and in which the union decides who will be engaged as an employee by the employer. This type of agreement is rare and there is no foundation whatsoever that the applicant union had any intention of negotiating such an agreement. It was said by Mr. Lynch in a hypothetical sense, but in my opinion the true objective of Lynch in raising this apparent monster and the supposed insistence by the union to get the employer to discharge employees who refused to join the union, was dredged up to paint the union as a ruthless and selfish organization

interested only in forcing the employer to discharge employees. To further drive his message home Mr. Lynch then told the captive audience that a previously proposed wage increase was withdrawn because of the union and if the union were certified any wage increase might be less than previously announced by the employer. The first part of this statement was said to put the blame on the union for the action of the employer in withdrawing his proposed wage increase. Attributing the denial of a wage increase because of the union was a complete fabrication because we previously had evidence that the union, in accordance with the relevant provision of the Act, had consented to the proposed wage increase. The second part of the statement in which Lynch said that if the union were certified that any wage increase might be less than previously announced by the employer, could only be described as an outright threat of what would happen if the employees voted for the union. This clumsy threat also clearly gave notice to the employees that this employer was going to fight the union tooth and nail at any subsequent bargaining.

6. In my opinion the speech by Mr. Lynch to his captive audience of employees prior to the representation vote in this matter, contained absolute falsehoods and threats. Such falsehoods and threats were made to both intimidate and coerce the employees into voting against the union in the subsequent representation vote.

7. In view of the foregoing I would set aside the June 18, 1974, representation vote as I am convinced by the evidence in this matter that the conduct of the employer both initially when the union came on the scene and subsequently just prior to the representation vote was such that the true wishes of the employees could not be expressed by any representation vote. Therefore, I would exercise the discretion given to the Board under section 7(4) of the Act and grant outright certification to the applicant union without the taking of a representation vote.

4057-73-JD: DUFFERIN PRECAST COMPANY, A SUBSIDIARY OF VIBREK INCORPORATED (Applicant) v. International Association of Bridge Structural and Ornamental Ironworkers, Local Union No. 700 Labourers International Union of North America Locals 625 and 506, and Poole Construction Limited (Respondents).

BEFORE: R.F. Egan, Alternate Chairman, and Board Members J.D. Bell and O. Hodges.

DECISION OF THE BOARD: August 9, 1974.

1. In an application dated May 8th, 1974, Poole Construction Limited requested the Board to reconsider, pursuant to Section 95(1)

of the Labour Relations Act, the Board decision dated 13th March, 1974, which dealt with the assignment of work involved in the erection and installation of architectural precast concrete units at the Canadian Imperial Bank of Commerce at Ouellette Avenue, Windsor.

2. A supplementary submission was made by Poole on June 7, 1974.

3. The Board has had the benefit of written submissions made by Dufferin Precast Company by letter dated June 5th, 1974, and by Labourers International Union of North America, Local 625 and 506 by letter dated June 27, 1974, dealing with the request for review made by Poole Construction Limited.

4. Although duly notified of the request and all of the submissions received by the Board, International Association of Bridge Structural and Ornamental Ironworkers, Local Union No. 700, has made no submissions to the Board on the question of review raised by Poole Construction Limited.

5. In its first submission Poole Construction Limited requested the Board to make an area decision with a view to resolving jurisdictional dispute as they relate to the erection of architectural precast panels in the city of Windsor and all surrounding area known as Board Zone 1.

6. In its supplementary submission Poole Construction Limited expanded somewhat on its original proposal. In its latter submission the suggestion is made that the Board make an area decision with respect to precast erectors in Board area No. 1, awarding the work to those who employ members of Local 506 and 625 if employed by precast erectors who are members of the Ontario Precast Concrete Manufacturers Association. It proposes that this decision be made "notwithstanding the fact that in Board area No. 1 a composite crew has frequently been used for the erection of precast architectural panels when erected with a general contractor who was not a member of the aforesaid Ontario Precast Manufacturers Association." The latter "fact" was not a finding of the Board in its decision of March 13th, 1974, but rather a conclusion urged by Poole Construction Limited.

7. Dufferein Precast Company in its letter of June 5th, 1974, disagrees with the statement contained in the Poole's submission that a composite crew has frequently been used on this work in Windsor. It does say, however, that "it has no objection to the Board reconsidering this matter to the extent that it might extend the scope of its decision to make it an area decision. Such a decision, it is respectfully submitted, would be to the effect that the Labourers' Union has the superior

and indeed only exclusive claim to such work in Ontario Labour Relations Board Zone 1."

8. The Labourers Union in its submission of June 24, 1974, also disputes the contention of Poole Construction Limited with respect to the use of composite crews on the work in question. The Labourers said that they have no objection to the suggestion that the decision be binding upon other precast contractors in Board area No. 1 where such contractors are members of the Ontario Precast Manufacturers Association. Labourers submit that such a decision would tend to avoid a multiplicity of proceedings involving evidence which would almost be identical in each case. Labourers point out that the Board may not be able to bind other contractors as "they are not parties under section 81(2) of the Act."

9. Section 81(2) reads as follows:

"The Board may in any direction made under subsection 1 provide that it shall be binding on the parties for other jobs then in existence or undertaken in the future in such geographic area as the Board considers advisable."

10. The above section gives the Board wide latitude in defining the geographical area in which any directions of the Board made under section 81(1) shall be binding upon the parties. The parties obviously can only be those who have participated in the proceedings before the Board which the Board's determination or decision is based. The widening of the present decision to include parties who did not participate as proposed by Poole Construction Limited is therefore, as suggested by the Labourers, beyond the power of the Board.

11. With this latter point in mind and in the absence of unanimity among the parties who took part in the hearing, and further in the absence of a full scale hearing of all parties likely to be affected by a decision related to future work, the Board in the exercise of its discretion decline to vary or revoke its decision of March 13, 1974.

5584-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. DINEEN ROADS & BRIDGES LIMITED (Respondent) v. Labourers International Union of North America, Local 607 (Intervener).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members E. Boyer and F.W. Murray.

APPEARANCES AT THE HEARING: L.A. MacLean and Tom Cope for the applicant;

C.M. McKeown, N. Verklan and W. Schafer for the respondent; A.M. Minsky, J. McCutcheon and H. Mancinelli for the intervener.

DECISION OF THE BOARD:

August 12, 1974.

1. The applicant in the present case seeks to be certified for a bargaining unit of carpenters, carpenters' apprentices and common labourers in the District of Thunder Bay. The respondent claims that the present application is untimely by virtue of a collective agreement that it has with the Labourers International Union of North America, Local 607. That trade union also claims an interest in these proceedings on the basis of the alleged collective agreement and has intervened in these proceedings.

2. There was filed with the reply and with the intervention by the Labourers what purports to be a collective agreement dated May 23, 1973, between Dineen Roads & Bridges Limited and Labourers International Union of North America Ontario Provincial Council on behalf of Local Union 607. The recognition provisions of that collective agreement affected Area 22, i.e., the District of Thunder Bay and certain classifications including common labourers and various other classifications set out in Schedules attached to the agreement. Thus, the collective agreement could be a bar to the present application insofar as it relates to certain aspects of the bargaining unit claimed to be appropriate by the applicant.

3. The applicant takes the position that the alleged collective agreement has in two previous decisions of this Board been held not to be a collective agreement. In one particular decision, in Board File No. 5104-73-R in an application for certification by Local 1669 of the applicant, by a decision dated March 15, 1974, the Board held that the collective agreement raised by the intervener and the respondent was not a bar to that application. In addition, in Board File No. 5103-73-R, in an application by the International Association of Bridge, Structural & Ornamental Ironworkers Local 759 the same agreement was referred to and held not to be a bar to that application. Both of these decisions contain the following two paragraphs:

The Board then asked counsel for Local 607 if it was prepared to proceed to establish its interest in this proceeding. Counsel for Local 607 stated that in view of the denial by the Board of the request for an adjournment, Local 607 was not prepared to proceed further in this case. Thereupon, counsel for Local 607 and Mr. H. Mancinelli left the Board Room and took no further part in the hearing.

The respondent introduced evidence respecting the alleged collective agreement between the respondent and Local 607. The respondent was unable to prove the alleged collective agreement in evidence. After the conclusion of the evidence of the respondent and after considering the representations of the parties, the Board ruled that having regard to the evidence before it and to the provisions of section 52 of The Labour Relations Act, that there was neither evidence of the existence of the alleged collective agreement between the respondent and Local 607 nor that Local 607 was entitled to represent the employees in the alleged bargaining unit at the time the alleged collective agreement was entered into. Accordingly, the Board ruled that the alleged collective agreement was not a bar to this application for certification.

One application was subsequently withdrawn so no final decision was made in the matter. However, with respect to the case involving Dineen Roads & Bridges Limited and the same collective agreement, the Ironworkers was certified and as a result of that certification have intervened in the present proceedings.

4. Counsel for the applicant takes the position that the finding in paragraph 6 of the decision of March 15, 1974, constitutes a declaration pursuant to section 52 of the Act and the bargaining rights of the Labourers International Union of North America, Local 607 were terminated.

5. Counsel for the respondent and for the intervener, Labourers Union, deny that the finding referred to was a declaration pursuant to section 52, and further take the position that the Board cannot apply the finding in that case to the present case. They take the position that the Board would be acting outside its jurisdiction if it were to accept a finding in a previous case as a finding of fact in the present case unless there is some doctrine of res judicata present to enable the Board to find that the matter has already been adjudicated upon. It is further argued that the doctrine of res judicata does not apply to the present circumstances since the parties presently before the Board were not the parties in the previous application.

6. The previous decisions referred to (Board File No. 5104-73-R and Board File No. 5103-73-R) were applications for certification. The courts have been quite clear in their directions to the Board that the Board is duty bound to apply all of the provisions of The Labour

Relations Act in any application before it; see Genaire Ltd. v. International Association of Machinists and O.L.R.B. 14 D.L.R. (2d) 201; Re Canac Shock Absorbers Ltd. and UAW Loc. 984 et al. 34 D.L.R. (3d) 644. Consequently, the previous panel of the Board dealing with this matter had the statutory power in the conduct of a certification proceeding to make a declaration terminating the bargaining rights under section 52 where a collective agreement was raised as a bar to the application. In paragraph 6 of its decision of March 15, 1974, the Board stated that "having regard to the provisions of section 52 of the Act, that there was neither evidence of the existence of the alleged collective agreement between Dineen Roads & Bridges Limited and Local 607 of the Labourers, nor that Local 607 was entitled to represent the employees in the alleged bargaining unit at the time the alleged collective agreement was entered into". We are of the view that such language constitutes a declaration pursuant to the provisions of section 52 of the Act. That being the case, this panel of the Board will not sit in review of that previous decision. Consequently, we find that the intervener has no interest in these proceedings and further that the agreement referred to by the respondent having been the subject matter of a declaration under subsection 1 of section 52 pursuant to subsection 4 of section 52 is no longer in operation and consequently not a bar to these proceedings.

7. Mr. C.F. Robicheau, Examiner, is authorized to inquire into and report to the Board on the composition of the bargaining unit and the list of employees filed by the respondent.

5513-74-JD: ADMIRAL ENGINEERING AND CONSTRUCTION LIMITED (Complainant) v. Local Union 47, Sheet Metal Workers International Association and the United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Respondents).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: James B. Chadwick and Hunter Phillips for the applicant; David L. McWilliam, Ron Taylor, Bob Belleville and Ray Guertin for the respondents.

DECISION OF THE BOARD: August 12, 1974.

1. This is a complaint filed under section 81 of The Labour Relations Act whereby Local Union 47, Sheet Metal Workers International Association (hereinafter referred to as "Local 47") is alleged to be requiring the complainant to assign the assemblage and installation of manufactured, pre-engineered modules at its Bowmar of Canada Limited project in Ottawa to its members and not to members of The United Brother-

hood of Carpenters and Joiners of America Local Union 93 (hereinafter referred to as "Local 93").

2. The complainant, Admiral Engineering and Construction Limited, is engaged in the business of building construction both in its own right and as a general contractor for other builders in the Ottawa area. In 1970 the complainant was conferred the exclusive franchise to sell, assemble and install "The Armco Building System" in Eastern Ontario. This particular system (hereinafter referred to as "The Armco System") is a pre-fabricated, pre-engineered method of construction whereby all of the component parts of a particular edifice are manufactured according to specification at the Armco Plant in Guelph, Ontario. Once manufactured the component parts are sent to the job site where they are assembled and installed by work crews presently consisting of carpenters and labourers. The essence of this dispute is whether "The Armco System" is sufficiently distinguishable from other pre-fabricated building systems applied in the Ottawa area to justify the assignment of the work in dispute to carpenters and not sheet metal workers.

3. For this purpose it appears that the complainant and Local 93 have entered into a collective bargaining relationship whereby Admiral has agreed to abide by the terms of the collective agreement negotiated between Local 93 and the Ottawa Construction Association. And more particularly, by Article 4 of the said agreement (entitled "Work Jurisdiction") the complainant has become bound to acknowledge "the right of the union to jurisdiction over the work normally carried out by carpenters and joiners"...and... "such work includes but is not limited to the following... carpentry work on ... shinglers and siders, acoustic tile and dry-wall applications, insulators (nailed and stapled) ... The setting and hanging of all doors and door frames and the setting in place and fastening of all wood windows and certain types of metal windows...Metal partitions and metal trim ..." In pursuance of this agreement and having regard to the peculiar characteristics of "The Armco System" work crews consisting of carpenters and their helpers have been trained in the intricacies of that system and have thereby become adept in the installation process at such "Armco" projects. It is suggested that to introduce sheet metal workers into these work crews would upset the proficiency of the complainant's installation procedures and cause a serious dislocation in its business both in terms of efficiency and economy.

4. Local 47, on the other hand, submits that "The Armco System" save for some admitted variations is basically the same system used in other pre-fabricated systems wherein component parts are manufactured in the factory and assembled on the job site by sheet metal workers. Indeed, representatives from Westeel Rosco Limited and Robertson Building Systems Ltd. (formerly Robertson-Irwin Limited) were called

by counsel for Local 47 to adduce evidence with respect to their particular building systems. As a result of the evidence adduced it is argued that the ultimate product that results is the same (ie a metal structure) no matter what the system that is applied. It therefore follows having regard to the fact that sheet metal workers are employed to erect the structures manufactured by firms such as Westeel and Robertson (and other smaller metal contractors) that there is a past practice in the area justifying the assemblage of "The Armco System" by members of Local 47. And furthermore, it is submitted in support of this proposition a decision of "The Impartial Jurisdictional Disputes Board For the Construction Industry" dated December 21, 1973, upholding the assignment of the "Installation of Armco steelbox metal siding ...to sheet metal workers on the basis of trade practice." The complainant, of course, did not participate in those proceedings and therefore did not feel bound by the result. In this regard, Local 93 is said to have deferred to the complainant's refusal to assign work to sheet metal workers and thereby continues to keep its members on the complainant's projects.

5. We do not propose to engage in a detailed description of the various building systems related to us throughout the hearing. The issue as put by the parties pertains to whether "The Armco System" is peculiarly distinct from the other systems described to justify the work assignment to members of Local 93. The Board has noted from the evidence adduced that there are significant variations in "The Armco System" from the other systems that does indeed require differing approaches with respect to the method of assemblage and installation. Whether these differences are sufficient to persuade us to uphold the assignment to the carpenters is the issue which remains to be explored. Firstly, it was stated that in the "Armco System" the metal siding panels abutt one another and are interlocked by bolts as the panels are installed. There is no room for spaces between the panels allowing for overlap. It was suggested to the Board that it was crucial therefore that the base of the structure upon which the panels gain their support be firm and plumb. Any variation in the evenness of the "Base-Z" would inevitably cause the panelling to be out of joint. Any such shortcoming could very well cause the contractor to disassemble the structure and begin all over again. The argument is made therefore that skills pertaining to the carpentry trade are necessary to the building of a firm, even base. Sheet metal workers it is further submitted are not similarly equipped with the skills reserved to carpenters for this purpose. Other systems differ in that the panels are supported by a metal arch and each panel overlaps the other concealing any spaces that may be apparent as a result of a less plumb structural base. It follows that the degree of precision in building the base of other systems described to us is not as necessary as in "The Armco System."

6. The second point of departure relates to some extent to the first. Because of the interlocking nature of the panels in "The Armco System", no cutting, fitting or sawing of metal takes place at the site. Whereas in other systems a great deal of "cutting, fitting and sawing" do take place at the job site. More time is spent in "The Armco System" in making certain that "the base-Z" is level whereas, it was suggested that more time is required in the installation process of other systems with respect to the application of skills more peculiar to the sheet metal trade in causing the panels to fit in the manner prescribed. For example, in other systems door frames, window frames and other openings in the sides of the structure are cut out on the job site. In "The Armco System" all component parts are built precisely to specification and practically no adjustment is necessary on the job site with respect to the assemblage of parts or the making of the necessary openings for door and window frames. Indeed the assemblage of the metal panelling is a relatively insignificant part of the job once the structure is built in accordance to the precise standards required. It was conceded that sheet metal work would only require 20% of the entire consumption of time in a particular project under "The Armco System".

7. The third significant point of departure relates to the installation of insulation between the outer and inner walls. The evidence before the Board indicated that "The Armco System" requires the use of a wood backing upon which the insulation is then stapled. The other systems described employ a metal backing and the insulation is then glued on. Indeed, in the few instances where wood strapping is applied in other systems the work is contracted out to carpenters as opposed to permitting sheet metal workers to perform that job function. It therefore appears at this particular stage of the process that carpentry skills would without doubt be clearly within the jurisdiction of Local 93 to discharge. No serious argument was made by counsel for Local 47 with respect to the exclusive jurisdiction of Local 93 to perform this area of the work assignment.

8. The Board is therefore of the opinion that the complainant has satisfied the onus attendant upon it to persuade us to uphold the assignment to Local 93. We are satisfied that in terms of efficiency and economy, it would be injurious to the complainant from a business perspective to upset work methods which are peculiarly applicable to a variant of the traditional methods of constructing the type of edifice described herein. Furthermore, we do not feel bound by the decision of the Impartial Jurisdictional Disputes Board having regard to the failure of Local 47 to satisfy us of an area practice which would apply to the special characteristics of "The Armco System" mode of procedure.

9. The Board notes the undertaking of the parties to abide by

the Board decision with respect to this particular work assignment and future assignments made in the Ottawa area. (see; section 81(2) of the Act).

10. The Board therefore directs that the assignment of "manufactured, and pre-engineered modules in the interior of the Bowmar of Canada Limited project" be assigned to members of Local 93 of the United Brotherhood of Carpenters and Joiners of America.

5862-74-U: Walter C. Sarich (Complainant) v. CORPORATION OF THE CITY OF SAULT STE. MARIE, ONTARIO (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members O. Hodges and W. H. Wightman.

APPEARANCES AT THE HEARING: Walter C. Sarich and Marija Sarich for the complainant; L. Staples, D.R. Evans and C.R. Bernardi for the respondent; H.R. Donofrio appearing on behalf of the Canadian Union of Public Employees.

DECISION OF THE BOARD: August 12, 1974.

1. This is a complaint under section 79 of the Labour Relations Act, in which the complainant, Walter C. Sarich, alleges he has been dealt with by the respondent contrary to various stipulated provisions of the Act.

2. In January 1973 Mr. Sarich was unemployed. He was advised by Canada Manpower that the respondent's Engineering Department required an inspector to perform minimum standards inspections and related duties, as part of its winter works program, an employment incentive program of fixed duration financed by the Provincial Government. On January 18th, Mr. Sarich was interviewed by Mr. Larue, the respondent's Chief Building Inspector. Immediately following the interview, Mr. Larue told Mr. Sarich that he was hired and the hiring was confirmed by letter the following day, signed by C. R. Bernardi, the respondent's Director of Personnel and Labour Relations. It is clear from the evidence that Mr. Sarich was advised by the respondent that the position which he would be filling was a temporary one and that the winter works program would terminate on May 31st, 1973. Mr. Sarich testified that he was told by an official at Canada Manpower that the position might become permanent.

3. From January 18th, 1973 to May 2nd, 1973, Mr. Sarich performed his duties as an inspector in a satisfactory manner. On May 2nd, the bargaining agent for a unit of the respondent's clerical and technical employees (Local 67 of the Canadian Union of Public Employees) authorized a strike. All of the persons within Local 67's bargaining unit participated

in the strike, which lasted from May 2nd through May 31st. It is noted that, although Mr. Sarich was occupying a position (Inspector Class 4, Zoning and Minimum Standards) not specifically referred to in Local 67's collective agreement, he was considered by both the employer and the union to be within the bargaining unit. It was established that he was a member in good standing of Local 67 from January 18th to May 31st, 1973.

4. There was no evidence that Mr. Sarich played a particularly prominent role in the strike. He was not a member of the negotiating team. Along with other striking employees, he performed picket duties. It is admitted that the picketing was orderly and that no illegal or even unusual events occurred. Reference was made to the fact that the dispute was prolonged, that both sides publicized their positions in the local press and that one offer of settlement made during the strike was rejected by the membership. However, there was no evidence that Mr. Sarich was an active participant in any aspect of strike strategy. Although Mr. Sarich attempted to suggest that the rejection of the first settlement offer had been the work of a more militant segment of the bargaining unit, he offered no evidence that he had any role in prompting the rejection.

5. At a special caucus meeting of the respondent's Council in early May (probably May 8th) called to consider budget estimates for the ensuing year, discussions were held concerning the creation of a permanent job to be known as "Minimum Standards Inspector". Prior to the meeting, Council had instructed the City Administrator, D. R. Evans, to consider the need for such a job and to obtain an assessment of Mr. Sarich's qualifications to fill it. At the meeting on May 8th, Mr. Evans apparently recommended the creation of the new position and reported that Sarich's superiors, Messrs. Jackson and Larue, were satisfied with Sarich's work performance. The evidence is unclear as to whether a vote on the matter was taken at the May 8th meeting and no minutes of that meeting were produced. Two days later, Council approved the 1973 budgetary estimates and included therein was the authorization to employ a full-time Minimum Standards Inspector, although no mention was made of the individual who would fill the position.

6. Following the evening caucus meeting of May 8th, the respondent's Mayor, Mr. Ronald Irwin, a family friend of the complainant, telephoned Mr. Sarich's home. Mr. Sarich was out and Mayor Irwin spoke to Mrs. Sarich. According to Irwin, he told Mrs. Sarich that he was "very pleased"; "that the job was there"; that Mr. Sarich's work record was "very good"; and that "it looked like he'd got the job". Mrs. Sarich's version of the conversation was slightly different: she testified that Mr. Irwin asked her to give Walter the message that "it has been passed and that he has the position".

7. Mr. Sarich testified that he was elated with the news. Along with his fellow employees he continued on strike and continued to perform picketing duties as required. On May 30th (one day before the signing of a memorandum ending the strike) he received a letter from the respondent dated May 23rd, 1973 advising him that effective May 31st his temporary employment under the winter incentive program would be terminated. It was established that sixteen persons (including Mr. Sarich) employed under the program were terminated on May 31st. Of the sixteen, Mr. Sarich and seven others were not re-employed. The remaining eight were re-employed within a few days. Six of the re-employed persons have since become permanent and two are still temporary.

8. Mr. Sarich testified that he was perturbed on receiving a notice of termination, particularly in the light of the Mayor's encouraging report following the meeting of May 8th. He immediately approached the Mayor, who told him to submit a letter so that it might be considered by Council. Correspondence ensued between Mr. Sarich and the City Administrator and finally, on June 19th, the City Administrator wrote to Mr. Sarich advising him that his written representations complaining of his termination had been considered by Council at its meeting of June 17th and that Sarich's request for a hearing was denied.

9. In addition to the written communications referred to in the preceding paragraph, Mr. Sarich and Mr. Evans apparently met in late May or early June. The evidence as to the details of their conversation was not precise. It seems that when Sarich asserted that Council had approved his permanent appointment at its earlier meeting in May, Evans replied that he, as City Administrator, was responsible for appointments below the rank of Department Head. In addition, Evan's position was that since the Provincial Government would soon be taking over responsibility for construction safety inspection, one of the incumbent safety inspectors was expected to be available to fill the newly-created position of Minimum Standards Inspector.

10. Mr. Sarich's last day worked was May 31st, 1974. On July 23rd the respondent employed a summer student who, it seems, performed at least some, and perhaps most, of the minimum standards inspection duties during the course of his summer employment. It is noted in passing that the respondent has an established policy of engaging as many summer students as budgetary limits permit. Later in 1973 - "after September", according to Mr. Bernardi - the position of Minimum Standards Inspector was permanently filled by one of the respondent's former safety inspectors, Mr. Donofrio. Thus, in the period between May 31st and Mr. Donofrio's appointment, it appears that no one person performed all of the minimum standards inspections, although latterly and even before his permanent reclassification, Mr. Donofrio seems to have done most of that work.

11. The evidence establishes that following his termination, Mr. Sarich was considered and rejected for three job openings with the respondent. In December, 1973, Council authorized the hiring of an additional full-time building inspector. The position was posted in accordance with Local 67's collective agreement and, although Mr. Sarich was considered, the position was given to a permits and specifications clerk in the Building Department, an employee of some ten years' seniority. In January, 1974 Mr. Sarich applied for the position of property and development co-ordinator, a supervisory position beyond the scope of the bargaining unit and, although he was interviewed, Sarich failed to obtain the position, which was filled by a person who, according to the respondent, had superior qualifications. Finally, another building inspector was hired recently, and a person from outside the civic service, who, according to Mr. Bernardi, had 30 years' experience in the building field, was selected over Mr. Sarich.

12. Mr. Sarich, in a very able presentation on his own behalf, emphasized a number of evidentiary points in support of his complaint: his satisfactory work record; the Mayor's encouraging report of May 8th, indicating that the matter was virtually settled in Sarich's favour; the sudden termination on May 30th; the subsequent refusal of Council to grant him a hearing; the hiring of a summer student to perform his duties; the ultimate filling of the position contrary to the posting provisions of the collective agreement; and his repeated failure to gain favourable consideration for subsequent job openings. He also alluded to an admission made by Mr. Bernardi that he, Bernardi, was aware of an earlier application which Mr. Sarich had made to the Ontario Labour Relations Board concerning his dismissal from Algoma Steel Corporation Limited. Mr. Sarich argued that this fact, together with Mr. Bernardi's admission that, upon reading the decision in the Board's Monthly Reports, he had contacted Algoma officials "to find out what the case was about" supported the inference that there was a conspiracy between the respondent and Algoma to deprive Mr. Sarich of employment.

13. Miss Staples, counsel on behalf of the respondent, was frank in recognizing that Mr. Sarich might well feel frustrated by the chain of events in the spring and summer of 1973. However, she contended that Mr. Sarich was not the victim of illegal or improper conduct, as he alleged. She argued that he was temporarily employed for the fixed term of the winter works program, which concluded on May 31st. She contended that the rehiring of some participants in the program following May 31st was responsive to the work requirements of the Corporation and that the failure to hire others was in no way discriminatory. She said that the Corporation had given genuine, good-faith consideration to Mr. Sarich's applications to fill subsequent vacancies but that in each case a person who, in the judgment of the

respondent, had superior claims - either in terms of seniority (where applicable) or qualifications or both - had been chosen.

14. She conceded that Mayor Irwin's optimistic prediction of May 8th may well have given Mr. Sarich false hopes. She argued, however, that the power of appointment lay in this instance with the City Administrator, in accordance with By-Law 4519; that the Administrator, when he realized in late May that a safety inspector of some years' seniority would soon be redundant, determined that the position should be left vacant and that the duties should be performed by existing staff, augmented by summer help, until the safety inspector's future had been finally determined and until certain internal organizational changes had been finalized. Finally, she submitted that the complainant had failed to meet the onus of showing that his termination was related in any way to the exercise of rights under the Labour Relations Act.

15. The burden of Mr. Sarich's argument was that he had received grossly unfair and unjust treatment by the respondent, and he cited a number of authorities and legal principles in support of that assertion. However, our task is not to determine whether his treatment on May 31st, and his subsequent inability to gain employment with the respondent, constitutes "just" treatment. Our limited statutory mandate is to determine whether he was denied employment for exercising rights under the Labour Relations Act.

16. As to the complainant's participation in Local 67's strike, there is no evidence, as we have said, that Mr. Sarich played any more prominent role than any of the other employees in the bargaining unit, all of whom, it should be emphasized, participated in the strike. As for his complaint against Algoma Steel, the only evidence which we have is that Mr. Bernardi, on seeing the report of the decision in the Board's monthly publication, made inquiries concerning the matter from some official at Algoma. The mere fact of that inquiry cannot, in our view, reasonably support the serious and far-reaching inference for which Mr. Sarich apparently contends: namely, that the respondent's failure to offer him permanent employment was motivated by the fact that he instituted proceedings under the Act against a former employer. While the Board stands prepared to draw reasonable inferences from circumstantial evidence, it cannot engage in wild speculation. In the instant case, there is simply insufficient evidence to permit this kind of inferential leap to find that the respondent has been motivated in whole or in part by any of the events relied upon by the complainant.

17. In complaints under section 79 of the Act, the onus rests upon the complainant to satisfy the Board on the balance of probabilities that the conduct complained of is contrary to the Act. Therefore even where, at the conclusion of the case, the evidence is in balance, the complaint must be dismissed. In the instant case, it cannot be said that on the balance of probabilities any of the statutory offences alleged have been committed.

18. We have, in effect, accepted the Corporation's defence that it has acted throughout in good faith. In its formal reply in these proceedings, the respondent refers to its willingness to consider Mr. Sarich's application for any suitable employment for which he may apply. Moreover, Corporation witnesses have attested, without reservation, to Mr. Sarich's satisfactory work performance. It is expected that the respondent's protestations of good faith, which we have accepted, will be reflected in its future consideration of Mr. Sarich's standing application for employment.

19. In the result, the complaint is dismissed.

4716-73-JD: ANCHOR SHORING LIMITED (Complainant) v. United Brotherhood of Carpenters & Joiners of America, Local Union #38, Stewart & Hinan Construction Limited (Respondents) v. Labourers' International Union of North America, Local 837 (Intervener).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: W.J. McNaughton and A. Burns for the complainant; Harold F. Caley and Peter Hanshar for Carpenters Local 38; James R. Leishman for Stewart & Hinan Construction Limited; A.M. Minsky and J. Vella for Labourers Local 837.

DECISION OF THE BOARD: August 12, 1974.

1. This is a complaint concerning work assignment made under section 81 of the Act. The complainant, Anchor Shoring Limited (hereinafter referred to as "Anchor") is a contractor who specializes in the construction of lagging and shoring at construction sites. The complainant performed the work in dispute on the Corbloc Job, King Street, St. Catharines, pursuant to a contract with Stewart & Hinan, the general contractor at the site in question. The work in dispute was assigned by Anchor to members of the intervener Labourers International Union of North America, Local 837 (hereinafter referred to as "Labourers"). The work was also claimed by the respondent United Brotherhood of Carpenters & Joiners of America, Local Union #38 (hereinafter referred to as "Carpenters"). The present complaint arises out of the claim by the Carpenters to have certain of the work in question assigned to members of the Carpenters Union rather than to members of the Labourers Union.

2. At the commencement of the hearing, counsel for the respondent, Carpenters, raised certain preliminary objections to the Board proceeding with this complaint and requested the Board to exercise its discretion under section 81 and refuse to hear the complaint. The respondent, Carpenters, took the position that because the job was now completed and

because the matter was also the subject matter of a grievance between the Carpenters and the general contractor with whom the Carpenters have a collective agreement, the Board ought not to hear this matter as a complaint under section 81, the main concern of the Carpenters being that the present hearing would prejudice the Carpenters in their grievance against Stewart & Hinan although it would not prejudice either Anchor or the Labourers. In assuming this position the Carpenters were relying on the decision of the Board in Northdown Drywall 72 CLLC 16,064.

3. The respondent, Labourers, in taking the position that the Board ought to proceed, pointed out that the Board has never taken in fact of completion of a job as a factor in refusing to hear a complaint under section 81. Further, although the Carpenters and Stewart & Hinan might have a collective agreement, there are no collective agreements between Anchor and the Carpenters or Stewart & Hinan and the Labourers. In such circumstances the only remedy open to these other parties is a complaint under section 81 and the Board ought not by the exercise of a discretion to deny these parties a remedy under the Act. The respondent has also noted that the Northdown Drywall case, supra, had not been followed in similar circumstances (in Board File No. 2370-72-JD re: C.A. Pitts [1973] OLRB M.R. p. 85 (Feb)).

4. After considering the representations of the parties the majority of the Board gave the following decision, Board Member, E. Boyer, dissenting:

The request by the respondent Carpenters that the Board exercise its discretion is denied. We are of the view that we can give no weight to the fact that the project has been completed. Further, the fact that a respondent party to the complaint has filed a grievance is not a consideration where the present complainant is not a party to the prospective arbitration. Reference is made to paragraph 3 of the decision in C.A. Pitts [1973] OLRB MR. p. 85 (Feb).

5. The work in dispute is the installation of lagging type shoring. To facilitate matters we shall describe the overall process and then point out the specific aspects of the operation which are in dispute. The site is initially staked out by a survey crew, which also sets out marks along the perimeter of the site at 8 feet intervals. At these 8 feet marks a drill is used to bore a vertical 2 feet diameter hole to a specified depth. At about this time "H" beams are brought to the site and are unloaded using a crane to hoist the beams from a truck and place them on the site. The crane lowers a beam, vertically into one of the

holes. (In the present case the beams were 22 feet long and having a 14" x 8" cross section.) The beam is held in a vertical position in the hole while ready mix concrete is placed in the hole to a depth of a few feet. The crane continues to hold the beam until the concrete is set. This process is repeated at each of the holes until the perimeter is surrounded by a series of "H" beams, which are referred to as soldier piles. It is important to note that the "H" beams have been positioned in the holes so that the open parts of the "H" face each other and the flat surfaces of the beam face the inside and the outside of the proposed excavation.

6. The next stage is the excavation of the site. Earth is removed by machine to the face of the "H" beam. At this time rough cut timber is delivered to the site. The timbers are 3" thick, 8 feet long and of various widths. The material is delivered by truck to the site and is unloaded in bundles by use of a crane. The earth between a pair of "H" beams is excavated by hand or power equipment to a depth of about 5" from the face of the "H" beam. The excavation at each such bay is for a depth of approximately 4 feet. The wooden lagging is then carried to the bay and placed between the two soldier piles, the face of the two "H" beams forming a flange behind which the wooden lagging is placed. The lagging is thus built upon the excavated bay by placing one timber on top of another. This process is repeated at each bay and the overall process can be repeated a number of times until the required depth of excavation is achieved. The end result is a wall with vertical "H" beams and planks which retain the earth at the side of the excavation. In some instances this wall later serves as the outside form when the foundation is constructed. Normally the wall is not removed except for a few feet near the top of the excavation, but remains buried in the earth adjacent to the foundation of the structure.

7. The employer, Anchor, performs the foregoing work with a crew of Labourers and Operating Engineers. The crane which holds the "H" beams in place is operated by an equipment operator and is directed by another employee claimed by the Operating Engineers. The actual installing of the lagging, however, is done by a crew of Labourers. In the present dispute the Carpenters claim that the plumbing of the "H" beam should be done by a Carpenter and the lagging should be carried from a stock pile, cut, if necessary, and inserted by Carpenters. Both Anchor and the Labourers claim that these operations can be performed by Labourers.

8. In jurisdictional disputes under section 81 the Board makes the work assignment, not on the basis of the jurisdictional claim, but in accordance with certain various criteria. Thus, a simple claim for jurisdiction may be that employees working with wood should be in the Carpenters Union. However such a jurisdictional claim is not sufficient for the resolution of a work assignment dispute. In cases such as the

present one the Board is faced with resolving competing claims by trade unions for job openings, and in resolving such claims the Board has developed a number of criteria. In the present case we propose to deal with the various criteria upon which such determinations are made and deal with the evidence relating to each of these criteria separately.

(a) Collective Bargaining Relationships

9. In the present case Anchor has a collective agreement with the Labourers. The Carpenters have a collective agreement with the general contractor, Stewart & Hinan. Under both collective agreements the two competing trade unions claim jurisdiction over the work. The fact that the Labourers have a collective agreement with the employer which was signed at the commencement of the present operation cannot be used to establish a jurisdictional claim in their favour. The mere fact of a collective agreement in such circumstances cannot be determinative of jurisdiction. In the present case it is not a matter of long standing employees having chosen one union rather than another to represent them. Thus, in the present case this criteria does not establish jurisdiction for either of the two competing trade unions.

(b) Skill and Training

10. In the present dispute there are two aspects of the work claimed by the Carpenters Union and in relating to skill and training these must be considered separately. The first aspect involves the matter of plumbing the "H" beams. In this regard the Carpenters Union claim the men supplied by it are more skilled than Labourers and certainly the evidence indicates that such a job contains many of the skills contained by members of the Carpenters Union. The Labourers on the other hand claim that they are capable of supplying such skilled employees and claim that such plumbing is only done by the use of a simple spirit level which can be operated by members of the Labourers Union.

11. The other aspect of the job claimed by the Carpenters relates to the handling, cutting and installing of the wooden lagging between the soldier piles. Neither of the competing trade unions lays claim to this work on the basis of either skill or previous training. Indeed, much of the evidence supplied to the Board by the Labourers Union and the employer is to the effect that such a job involves no skill whatsoever. It was merely a "bull work" job. We are of the view that if there is no skill content to a job this does not pave the way for a jurisdictional claim by one trade union or another. The net result would therefore be that a low skilled job favours neither of the two competing unions and not the trade union providing employees with minimal skills. In sum, we are of the view that this aspect of the dispute favours neither of the competing trade unions.

(c) Economic Considerations

12. It was argued by both the employer and the Labourers Union that the economic considerations in the present dispute lay with the Labourers. Indeed, no evidence was presented by any party to the dispute with respect to what we would consider to be the economic considerations in relation to a work assignment dispute.

13. The simple claim that the wage rates are lower in one collective agreement rather than another does not of itself provide a criteria for settling a jurisdictional dispute. Simple put, no trade union can claim jurisdiction merely because it is prepared to do the work cheaper than another trade union.

14. The other economic consideration that was raised in the present dispute was the matter that the employer claimed it was easier and more economical to perform all of the work in question using a crew of Labourers rather than a crew of Carpenters and Labourers; However, it was pointed out by witnesses for the Carpenters that such scheduling problems relating to work flow are an integral part of construction and are therefore not grounds for claiming that they are not more economical. Indeed the two competing claims in this regard were left as assertions in favour of one side or the other side. As such we find that that evidence is not conclusive of an assignment in favour of either the Carpenters or the Labourers.

(d) Employer Practice

15. The employer's practice in the present case was quite clearly that the employer had a past practice in other areas in the Province of employing Labourers to perform the work in dispute. The employer has no past practice in the present area and indeed hired the Labourers as required through the Local Union hiring hall. In this regard therefore this consideration favours the Labourers Union.

(e) Area Practice

16. In this case, as in most cases of jurisdictional disputes, the Board heard copious amounts of evidence concerning the area practice. The position of the Carpenters is that the area practice has been to use Carpenters in the installation of lagging and evidence relating to a number of jobs in the Niagara area was given. On the other hand the employer and the Labourers called evidence to show that there was no clear cut practice in the Niagara area of employing either Labourers or Carpenters.

17. On the basis of the evidence presented to the Board and having regard to the conflicts in the various aspects of the evidence presented by the Carpenters Union, we are of the view that no clear area practice

was established by either the Carpenters or the Labourers for the work in question. In this regard then this criteria does not favour either of the competing trade unions.

18. Having regard to the foregoing considerations we are of the view that they only ingredient which disposes of the case is the employer's past practice. All the other factors are undeterminative of the dispute at hand. The Board accordingly makes the following direction:

The applicant, Anchor Shoring Limited,
shall at the Corbloc Job, King Street,
St. Catharines, continue to assign all
of the work in relation to the insertion
of soldier piles and the installation of
lagging to members of Labourers'
International Union of North America,
Local 837.

4172-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. DEL ZOTTO ENTERPRISES LIMITED (Respondent) v. Sardina Investments Limited (Respondent) v. Demiro Construction Limited (Respondent) v. Elru Payroll Company Limited (Respondent) v. Jantro Corporation Limited (Respondent) v. Zaph Construction Limited (Respondent).

- and -

4187-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. DEL ZOTTO ENTERPRISES LIMITED (Respondent) v. Sardina Investments Limited (Respondent) v. Demiro Construction Limited (Respondent) v. Elru Payroll Company Limited (Respondent) v. Jantro Corporation Limited (Respondent) v. Zaph Construction Limited (Respondent).

- and

4188-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. DEL ZOTTO ENTERPRISES LIMITED (Respondent) v. Sardina Investments Limited (Respondent) v. Demiro Construction Limited (Respondent) v. Elru Payroll Company Limited (Respondent) v. Jantro Corporation Limited (Respondent) v. Zaph Construction Limited (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: John P. Nelligan and J.A. Edmond for the applicant; Michael G. Horan and L.B. Thomson for Del Zotto Enterprises Limited, Sardina Investments Limited, Demiro Construction Limited, Elru Payroll Company Limited and Jantro Corporation Limited; R.C. Filion and N. Dalbello for Zaph Construction Limited.

DECISION OF THE BOARD:

August 12, 1974.

1. Prior to the hearing in this matter the applicant requested that Elru Payroll Company Limited, Janthro Corporation Limited and Zaph Construction Limited, be added to these proceedings as parties respondent. Counsel for Zaph Construction Limited, and counsel for Elru Payroll Company Limited and Janthro Corporation Limited argued that in the absence of a bona fide mistake with respect to the proper name of the respondent the Board had no power to add these parties as respondents in the present proceedings. The argument presented to the Board by counsel was that section 93 of the Act is the only section of the Act that refers to the adding of parties, and secondly, any provision of the Board's Rules of Procedure had to be read as limited by section 93 of the Act. The Board's Rules in section 54 provide as follows:

54. The Board may direct that any person be added as a party to a proceeding or be served with any document, as the Board considers advisable.

It is of course trite law that the regulations made under a statute cannot contradict the intention of the statute under which they are made. We cannot, however, accept the proposition by counsel for these parties that the source of section 54 of the Board's Rules is section 93 of the Act. That section reads as follows:

93. Where in any proceedings before the Board the Board is satisfied that a bona fide mistake has been made with the result that the proper person or trade union has not been named as a party or has been incorrectly named, the Board may order the proper person or trade union to be substituted or added as a party to the proceedings or to be correctly named upon such terms as appear to the Board to be just.

It may very well be that a change in name would procedurally be dealt with under the provisions of section 54 of the Rules, but section 54 of the Rules contemplates other situations in which the Board would want to add parties to a proceeding. In this respect we are of the view that section 54 of the Rules arises out of the broad power given the Board in subsection 12 of section 91 which reads as follows:

91.-(12) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions, and the Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

In order to give a full opportunity to anyone affected by a proceeding it is, of course, necessary to serve them with documents as provided for in section 54 of the Rules and in order to enable them to participate in the proceedings it is necessary to add them as parties as contemplated by section 54 of the Rules. Thus, section 54 of the Rules reflects not only the powers given to the Board by The Labour Relations Act, but also the general legal requirements that anyone affected by a decision of the Board to given an opportunity for a fair hearing.

2. In the present case the applicant's contention is not that a bona fide mistake has been made with respect to the name of the respondent, but is rather that since this application was made it has become apparent that other corporate entities than those named in the applications might be affected by the Board's decision in the present case. Accordingly, the applicant has requested that these local entities which might be affected by the Board's decision be made party to this application. By making them a party the Board entitles them to make representations on the issues raised by the applicant in this case, and we do not propose to narrowly interpret section 54 of the Rules in order to prevent them from participating in these proceedings. Accordingly Elru Payroll Company Limited, Jantro Corporation Limited and Zaph Construction Limited are added as parties to the respondent in the present application. Upon the Board making this determination counsel for Zaph Construction Limited informed the Board that he had no further instructions and he withdrew from the proceedings.

3. The applicant has requested that the Board apply the provisions of section 1(4) of The Labour Relations Act and find that the respondent companies constitute one employer for the purposes of The Labour Relations Act. The Board heard extensive evidence on the operation of certain of these companies in relation to two job sites in the City of Ottawa. In order to facilitate dealing with the copious evidence before the Board we propose to deal with it in the following parts: (a) Evidence Concerning the Contractual Relations on the Job Site; (b) Evidence Concerning Appearances on the Job Site; (c) Evidence Concerning the Payroll and Bookkeeping Procedure Relating to these Jobs; and finally (d) Evidence of an Employee on the Job Site.

(a) Evidence Concerning the Contractual Relations on the Job Site

4. At the time when this application was made there were three job sites in the City of Ottawa which were apartment buildings on Bank Street, Thompson Street and Clementine Boulevard. All three of these projects were being performed for the Ontario Housing Corporation. The evidence concerning these three projects is that Ontario Housing Corporation made a contract with Jantro Corporation Limited for the development and construction of the buildings. It appears that Jantro Corporation Limited at that time was acting as a trustee for Deltan Realty Limited because sometime after the original contract with the Ontario Housing Corporation was made Deltan Realty Limited contracted with Sardina Investments Limited that Sardina would act as builder for Deltan Realty Limited on the basis of cost of the building, plus \$500.00 per unit, plus office overhead with respect to two of the projects and on a fixed cost with respect to the remaining project. Sardina Investments Limited in turn contracted with Demiro Construction Limited to perform certain construction relating to the poured concrete for the apartment buildings in question.

(b) Evidence Concerning Appearances on the Job Site

5. The evidence concerning two of the three job sites at sometime after the application had been made, but while the building was in progress, is quite informative. The two projects described had two signs on them - one referring to the fact that the project was an Ontario Housing Corporation project, and another being a trailer with the word "Del Zotto" with no other identifying marks. The site office apparently was in an apartment on the ground floor of the building. On the wall there was a letter with the word "Del Zotto" on the letterhead. That letter described the project and gave the name and address of the constructor and owner as Sardina Investments Limited with certain other information concerning the project, including the name of the supervisor. There were also on the site office purchase order books having the name Sardina Investments Limited and Demiro Construction Limited. The time cards for the employees at one of the sites had no designations as to the employer. The men on the job sites had hard hats with the word "Del Zotto" thereon. Also evident on the wall was a "concrete pour list" which referred to no company, but had the name "Del Zotto" at the top. At one of the job sites a safety poster indicated that the name of the contractor was Tridel Construction. At that site the time cards used by the employees had "Demiro" on the cards for the carpenters and "Demiro" or "Sardina" on the cards for the labourers. These then were the names commonly appearing at the job site.

6. Of particular interest in this case is the use of the word "Del Zotto" which in a certain guise appears as a logotype on much of the correspondence referred to in these files, and also in the form

of signs on the job site. Thus, for instance, the letters on file with the Ontario Housing Corporation concerning these three projects have a standard letterhead with the word "Del Zotto" at the top and with company names typed in across the top. The correspondence listing the sub-trades appearing on the job in one instance appears to have Sardina Investments Limited at the top of the letterhead and is then signed on behalf of Janthro Corporation Limited. On the other hand another letter has Janthro Corporation Limited at the top and signed on behalf of Tridel Construction. The third letter appears to be from Sardina Investments Limited. Counsel for the respondent suggested that the logotype "Del Zotto" was distinct from the respondent Del Zotto Enterprises Limited and clearly the name Del Zotto Enterprises Limited does not appear on any of the contracts or other documentary evidence adduced before this Board. However, it is clear that this identifying term has been used by a number of the respondents in this case and no explanation was given as to how these respondents were entitled to use that trade name.

(c) Evidence Concerning the Payroll and Book-keeping Procedures Relating to these Jobs

7. The Board also heard a substantial amount of evidence concerning the paying of the employees claimed by the applicant to be the employees of the respondent companies in the present case. The employees were issued cheques on which the only identifiable corporate name is "Elru Payroll Co. Ltd." and that name is prefaced by the number "8". The Board heard evidence that Elru Payroll Company Limited as such is basically a computer operation and that the accounting, bookkeeping and business offices of all of the respondents is run by a company known as Miramar Holdings Limited, and the Elru Payroll Company Limited is essentially a computerized arm of Miramar Holdings Limited. The evidence of the responsible officials of Miramar Holdings Limited is that the number "8" appearing on the pay cheque designates the account of Zaph Construction Limited and indeed it appears that for income tax purposes, for workmen's compensation purposes and for the records kept by Miramar Holdings Limited that the designated employer of these employees is Zaph Construction Limited. It was also evidence that the various other respondents do not employ any employees who might be affected by this application.

(d) Evidence of an Employee on the Job Site

8. We now turn to the evidence of one of the employees on the job site. When this employee commenced work at these projects he was told in loose terms that he was going to work for "Del Zotto". At the project he was assigned a time card and that time card had printed on it the name "Demiro", and he was subsequently told that he was working for Demiro Construction Limited. The employee tendered as an exhibit a copy of the T4 slip that he received for income tax purposes, and that

lists the employer as Zaph Construction Limited. When questioned about whether he knew that Zaph Construction Limited was his employer, the employee indicated he was not aware of this and when pressed he indicated that he had only heard of that company on one previous occasion. His evidence was that one day on the job site after commencing work he was sitting in the job site office. On that occasion he observed the job clerk in the presence of the project superintendent copying information from various time cards, including his own, to other time cards. At that point he noticed that on the copy the name Demiro Construction Limited changed to Zaph Construction Limited. These cards were later produced in evidence and we have no doubt about the accuracy of the employee's observation on that point.

9. Having summarized the evidence presented in this case we now turn to section 1(4) of the Act which reads as follows:

1.-(4) Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act.

This provision empowers the Board to treat a number of "entities" as one employer if three conditions are met. Namely;

- (1) There is more than one entity, i.e., corporation, individual, firm, syndicate, association or any combination of these things.
- (2) These entities are engaged in associated or related activities.
- (3) The entities are under common direction or under common control.

In the present case it is clear that there are a number of entities. It is further clear that their activities are associated or related in the construction of the apartment buildings in question. The question which remains is whether these entities are under common direction or under common control.

10. What distinguishes the present case from a number of earlier applications in which section 1(4) was raised is that in the present case the evidence presented addresses itself to the matter of common direction rather than common control. In other cases the evidence frequently deals with the ownership of the entities in question. Such ownership is then taken to be an indicia of control and overlapping of common ownership leads to the conclusion of common control. In the present case certain evidence relating to the corporation officers of the respondent corporations was tendered. Although certain names are common to certain of the respondent companies, with respect to others such a link was not established.

11. On the other hand counsel for the applicant argued that there is common direction of the work in question and that direction is spread over a number of the corporate entities and on the basis of such evidence the Board can conclude that these separate entities should indeed be treated as one employer within the meaning of The Labour Relations Act.

12. When one reviews the evidence concerning the contractual relationship, the appearances at the job site and the use of the various company names with no apparent care as to when such company names are used, one can indeed draw the conclusion that it is only when such companies are under common direction, can such corporate names be used interchangeably. Indeed, the most telling evidence in this regard is the evidence of the employee relating to his time card. In affect we have an agent of Sardina Investments changing the name on a time card from Demiro Construction Limited to Zaph Construction Limited without the knowledge of that employee. It is indeed inconceivable that company A can change a time card made out in the name of company B to the name of company C unless there is some common direction of the affairs of those three corporations. To suggest that these are three separate entities using separate agents and employees is to make a mockery of the idea of corporate structure much less a mockery of section 1(4) of the Act, and we are therefore of the view that certain of the respondent companies should properly be treated as one employer within the meaning of section 1(4) of the Act. The question, however, is which entities fall within the one employer.

13. There has been clear evidence that Sardina Investments Limited, Demiro Construction Limited, Zaph Construction Limited and Elru Payroll Company Limited, have direct links with the employees affected by this application. The question remains, however, what is the status of Deltan Realty Limited and Jantro Corporation Limited. The evidence in regard to these two corporations is that they were the corporations or corporation that contracted with Sardina Investments Limited concerning the construction of the buildings in question. In this regard we are not prepared to regard them as an employer in the present case since the only connection with the other companies is this contractual arrangement.

14. The most difficult aspect of the present case is the relationship of Del Zotto Enterprises Limited to the various other respondents. The use of the Del Zotto logotype in various matters relating to these entities was clear from the evidence before the Board. The question, however, arises as to whether this logotype brings in as part of the one employer, Del Zotto Enterprises Limited.

15. On the other hand there was no evidence linking the logotype "Del Zotto" to Del Zotto Enterprises Limited. The facts established in evidence that various of the respondents were identified by the use of the logotype "Del Zotto" does not in our view establish such a link. In the absence of some evidence tying the use of that logotype to the respondent, Del Zotto Enterprises Limited, we are unable to conclude that that particular corporate entity exercised part of the common direction of the various other corporate entities.

16. In view of the above findings the Board therefore finds that Demiro Construction Limited, Sardina Investments Limited, Zaph Construction Limited and Elru Payroll Company Limited, constitute one employer for the purposes of The Labour Relations Act. These applications insofar as they relate to the remaining respondents, Del Zotto Enterprises Limited and Jantro Corporation Limited is hereby dismissed.

. . .

21. A certificate will issue to the applicant with respect to the following employers: Demiro Construction Limited; Sardina Investments Limited; Zaph Construction Limited and Elru Payroll Company Limited.

6096-74-R: Service Employees Union Local 478 Affiliated with A. F. of L., C.I.O., C.L.C. (Applicant) v. SOUTH CENTENNIAL MANOR (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: M. Levinson, W. Angus and P. Lovering for the applicant; E. Rovet and M. Turcotte for the respondent.

DECISION OF THE BOARD: August 13, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. Having regard to the agreement of the parties, the Board further finds that all employees of the respondent at Iroquois Falls, save and except professional nursing staff, physiotherapists, occupational therapists, supervisors, foremen, persons above the rank of supervisor and foreman, office staff, persons regularly employed for

not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. By letter dated July 29, 1974, counsel for the respondent filed charges in this matter alleging that Mrs. Chircoski a Nurses' Aid in the employ of the respondent, had on behalf of the applicant during its organizational campaign, by telephone threatened Mrs. Lortie, a fellow employee, with loss of her employment unless she were to become a member of the union. It is counsel's contention that the circumstances surrounding this alleged unfair labour practice is contrary to the provisions of section 61 of the Act and of sufficient gravity so as to warrant the Board dismissing this application.

4. However, prior to the hearing of this matter scheduled for August 6, 1974 in Toronto, counsel for the respondent by letter dated August 1, 1974, advised the Registrar that he would be seeking a two week adjournment of these proceedings on the basis that the respondent's witness, Mrs. Lortie is presently recuperating from her recent operation and is therefore physically unable to attend the Board hearing on the scheduled date. The applicant is opposed to any adjournment of these proceedings and by letter dated August 2, 1974, takes the position that even if the Board were to accept Mrs. Lortie's evidence, the charges as filed would nevertheless not constitute sufficient grounds so as to prevent the applicant from being certified. During the course of the hearing, counsel for the respondent filed with the Board, the certificate of a medical practitioner in Cochrane, indicating that his patient (viz. the witness, Mrs. Lortie) has not recovered sufficiently from her illness and surgery in order for her to travel.

5. In support of his request, counsel for the respondent cited the decision of the Board in the Civil Service Association of Ont. (Inc.) case [1971] OLRB M.R. 538, where at page 539, appears the following:

"It is not the Board's practice to adjourn a hearing upon the request of one party unless the request for the adjournment is based on reasons completely beyond the control of the party (e.g. an essential witness has been hospitalized, etc.)."

In this regard, it is argued that Mrs. Lortie is an essential witness whose evidence cannot be given through another witness. Since the request for the adjournment is based on reasons completely beyond the control of the respondent, then in all of the circumstances, it is submitted that this is a proper case for the Board's granting an adjournment upon the request of one party.

6. It is not disputed that Mrs. Chircoski is a rank and file employee. Her status at all relevant times was that of a voluntary canvasser acting on behalf of the applicant and not that of a paid trade union organizer retained on a full-time basis. Further, a review of the Board's records discloses that no membership card was tendered by the applicant on behalf of Mrs. Lortie. In these circumstances, counsel for the applicant submits that even if the charges as alleged are fully proved, they would nevertheless, on the basis of the Board's past jurisprudence, not prevent the applicant from being certified outright by this Board.

7. Having carefully reviewed the principles as set out in the Linhaven Home for the Aged (St. Catharines, Ont) case OLRB M.R. May, 1962, p. 66 and the Canadian Electric Box and Stampings Limited case OLRB M.R. Sept. 1964, p. 284 and to the cases as referred therein, we share the opinion of counsel for the applicant that the events surrounding the instant application, even if proven, are not those under which the Board would normally issue an outright dismissal of the proceedings.

8. However, in the instant case, it is clear that the applicant has submitted evidence of membership on behalf of 33 employees whose names correspond to the 44 persons as shown on the respondent's revised lists. Mrs. Chircoski is shown as collector on the face of six of the said 33 membership cards tendered in these proceedings. Thus, in our opinion, it would at least still remain open to the Board in the particular circumstances of this case to discount all of the remaining cards in which Mrs. Chircoski is shown as having participated in as collector, such that the applicant's membership position could therefore be reduced from one of outright certification to that of a vote. (In this regard, see the decision of the Board in the Fabrimon Manufacturing Limited Case OLRB M.R. June, 1969, p. 353 and in particular paragraph #7 at page 355).

9. Having therefore carefully reviewed the representations of the parties and taking into account all of the particular circumstances of this case, we are not prepared to dispose of this application without a further hearing. Further, we are satisfied that an adjournment of these proceedings is required in order "to permit an adequate hearing to be held" pursuant to the provisions of Section 21 of the Statutory Powers Procedure Act.

10. Accordingly, the Registrar is directed to list this application for continuation of hearing at Timmins at the earliest available date in order to enable the respondent to adduce evidence in support of its charges as filed.

5438-74-R: International Molders & Allied Workers Union (Applicant)
v. EX-CELL-O CORPORATION OF CANADA, LIMITED (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: E. C. Witthames and E. Bartley for the applicant; B. W. Binning and R. H. Strickland for the respondent.

DECISION OF VICE-CHAIRMAN, FRANK V. BOSCARIOL AND BOARD MEMBER H.J.F. ADE:
August 13, 1974.

1. Pursuant to its decision dated April 18, 1974, the Examiner convened a meeting of the parties which culminated in an agreed Statement of Fact dated June 17, 1974 concerning all matters relating to the community of interest, if any, existing between the eleven (now amended to twelve at the subsequent hearing of this matter on August 9, 1974) persons employed by the respondent in its Drafting and Engineering Department and the remainder of the employees included in the bargaining unit as defined therein.

2. It is beyond question that these particular employees, who are generally engaged solely in the engineering aspects of special custom machinery with selling prices ranging from \$100,000.00 to \$700,000.00 per machine, possess special technical skills. Further, this factor is reflected in the salaries paid to these persons, which on the average, are double to those paid to the remaining "white collar" employees. It is the respondent's position that the said Department which accounts for some 28% of its total volume of business is, in effect, a distinct and unique entity and as such distinguishably separate from the remainder of its office and clerical operations. The applicant, on the other hand, maintains that these engineering operations represent an integral portion of the respondent's office operations and to "fragment" such operations in these circumstances into two separate bargaining units (a local of the applicant parent trade union presently represents the respondent's production employees in the plant), would do violence to the Board's established policy in this regard. Reduced to its essentials, the question before this Board therefore is to determine whether there exists "a functional coherence and interdependence" between these two groups of employees or whether the employees as encompassed in the Drafting and Engineering Department comprise in themselves a separate and distinct unit of employees appropriate for collective bargaining.

3. Having carefully reviewed the totality of the evidence as adduced in the said agreed Statement of Fact and taking into account the oral representations of the parties thereto, we find that the said Drafting and Engineering Department does operate generally as a functionally independent entity. As such, we are satisfied that the

employees as encompassed therein, represent a recognizable cohesive group warranting the finding that two bargaining units would be appropriate in the particular circumstances of this case.

4. In reaching this conclusion, we have taken particular note of the following factors distinguishing these employees as encompassed in the said Department from the regular office and clerical unit, viz: the geographic "sectional" separation of these employees; their separate direct supervision; the degree of discretion allotted to them especially in the areas of sub-contracting work to other engineering companies and of determining whether parts of certain special machinery will be manufactured by the respondent company itself or whether such parts will be purchased from an outside tool component manufacturer; in turn, their ability to perform engineering work as sub-contracted to them from other manufacturers; their general and overall authority to deal directly with the respondent's customers and lastly, the difference in the schedule of hours assigned to them. In the absence therefore of any evidence relating to interchange of these highly skilled persons with the remainder of the employees (indeed, despite its name, the said Department has no draftsmen), we are therefore prepared in all of the circumstances, to grant to these employees a separate bargaining unit as requested by the respondent.

5. Among the cases relied upon by the parties and which the Board considered in arriving at its conclusion are the following: The Governors of the University of Toronto case OLRB M.R. February 1969, p. 1149; McMaster University case (1973) OLRB M.R. 102; The Children's Aid Society of Huron County case (1971) OLRB M.R. 632; Usarco Limited case OLRB M.R. September, 1967, p. 526; Essex Health Association case OLRB M.R. November, 1971, p. 716; Automatic Electric (Canada) Limited case OLRB M.R. February, 1969, p. 1162; Waterloo County Health Unit case OLRB M.R. January, 1969, p. 1016; The Board of Education for the City of Toronto case OLRB M.R. July 1970 at p. 430; The Board of Health of the York-Oshawa District Health Unit OLRB M.R., June 1969, p. 340; Paragon Tools Company, Limited OLRB M.R. May, 1969, p. 209; The Board of Education for the Borough of North York OLRB M.R. December 1970, p. 915; and East York Public Library Board (1971) OLRB M.R. 120.

6. Accordingly, the description of the bargaining unit as initially determined by the Board on agreement of the parties is amended and the Board therefore finds that all office and clerical employees of the respondent at London, save and except supervisors, persons above the rank of supervisor, Assistant Personnel Manager, Plant Nurse, Purchasing Agent, Outside Salesmen, Methods and Standards Analysts, Professional Engineers, Metallurgist, Secretary to the General Manager, Secretary to the Personnel Manager, persons employed in the Drafting and Engineering Department, persons employed for not more than twenty-four hours per week and employees covered by a subsisting collective agreement between the respondent and the International Molders and Allied Workers Union, Local

49, dated the 24th day of December, 1971, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #1).

7. For purposes of clarity the Board notes the agreement of the parties to the effect that the term "Professional Engineers" encompasses those professional engineers practicing their profession with the respondent company.

8. The Board further finds that all employees of the respondent engaged in its Drafting and Engineering Department, save and except supervisors and persons above the rank of supervisor, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #2).

. . .

10. A certificate will issue to the applicant with respect to bargaining unit #2.

. . .

14. The matter is referred to the Registrar.

DISSENT OF BOARD MEMBER E. BOYER: August 13, 1974.

Having regard to the Board's aversion to the fragmentation of bargaining units, I would have determined that one bargaining unit was appropriate in the particular circumstances of this case.

5716-74-JD: Local 527 Labourers' International Union of North America (Complainant) v. Local 71 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (Respondent #1) v. Local 586 of the International Brotherhood of Electrical Workers (Respondent #2) v. ELLIS-DON LIMITED (Respondent #3).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members E. Boyer and F.W. Murray.

APPEARANCES AT THE HEARING: F. Manoni for the applicant; Dennis J. Power, Leo Martel and Tom Moffatt for respondent #1 and respondent #2; R.J. Todhunter and Geo Fiddler for respondent #3.

DECISION OF THE BOARD: August 14, 1974.

1. This is a complaint concerning work assignment in which Local 527 of the Labourers' International Union of North America (hereinafter

referred to as "the Labourers") is the complainant. The complainant requests that certain work be assigned to members of the Labourers Union rather than to members of either Local 71 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (hereinafter referred to as "the Plumbers") or members of Local 586 of the International Brotherhood of Electrical Workers (hereinafter referred to as "the Electrical Workers"). The employer in the present case (the respondent Ellis-Don Limited) has a collective agreement with the Labourers Union and initially made an assignment of the work in dispute to that trade union. It appears, however, that at the commencement of the work in dispute there was a work stoppage by other trades at work on the job and Ellis-Don, which apparently initially intended to perform the work using its own employees, subcontracted the work to Canadian Comstock Ltd. the employer of the Electrical Workers, and Sayers & Associates Ltd., the employer of the Plumbers Union. The work stoppage was settled as a result of negotiations which resulted in an agreement that the Labourers would perform the work on some twenty modules and the work would be performed on the remaining modules by the Electrical Workers and the Plumbers. Both Sayers & Associates Ltd. and Canadian Comstock Ltd. were given notice of these proceedings. However, they did not file a reply nor did they enter an appearance at the hearing.

2. The parties have agreed the following description of the work in disputes, "the unloading, stockpiling of steel frame service modules of various sizes and design and the delivering of same to the location of installation at the Bank of Canada project in Ottawa between Wellington, Sparks, Kent and Bank Streets". It appears that no dispute arises as to who is entitled to perform the actual setting of these modules. However, although the installation of the modules is not in dispute it is clear that the fear that the Labourers were going to perform this work was the cause of the work stoppage referred to earlier.

3. The modules in question are of various sizes and complexities. Simply put, they range from basic fire hose cabinets and electrical boxes to units that include water fountains, clocks and speakers of various combinations thereof. The modules do not contain the fixtures subsequently installed therein. At the hearing in this matter it was apparent that there was some dispute as to the method and technique of installing these modules; however, the installation of these modules is not in question at this time. However, the problem of installation has a bearing on this dispute and will be dealt with later.

4. In order to facilitate dealing with the evidence presented the Board in the present case, and in making the actual work assignment, we propose to deal with the various criteria upon which the Board bases its decision in a work assignment dispute and deal with the evidence as it touches upon each of these points at that time.

Collective Agreement

5. As noted above, the Labourers have a collective agreement with Ellis-Don, the Electrical Workers have a collective agreement with Comstock, the Plumbers have a collective agreement with Sayers. The Labourers have no collective agreements with either Comstock or Sayers and Ellis-Don has no collective agreement with either the Plumbers or the Electrical Workers. Since all of these collective agreements purport to cover the work in dispute, we find that no weight can be given to this factor in determining this dispute.

Employer Past Practice

6. The evidence in this regard is that these modules are of a relatively new design and have not been dealt with by Ellis-Don either in the Ottawa area or in any other area. In this regard no inference can be drawn from this criteria.

Skills

7. It is not suggested by anyone present that the work in dispute, namely, the offloading and handling of the modules is skilled work. In this regard the actual work itself favours neither the Labourers or the Electrical Workers or the Plumbers in performance of the work.

8. The matter was however raised by the Plumbers and the Electricians that in the handling of these modules the question of the rejection of unsuitable modules and the matter of the correct choice of the module at the stockpiles for handling to the location of installation is a consideration to be given some weight. This contention was supported by the evidence presented to the Board. We find, therefore, that this criteria indicates that at least the Plumbers and Electricians should be participating in the handling of the modules.

Economy and Efficiency

9. The Labourers in the present case claim that economics rest in their favour since the wage rates in their collective agreement are lower. We are of the view that such a claim does not support a jurisdictional claim to the work assignment in this case.

10. The claim was made, however, by the Electrical Workers and the Plumbers concerning the efficiency of having skilled tradesmen doing the handling and the relationship of this handling to the work flow on the job, principally with respect to the selection of proper modules at the stock pile. Although this may be a factor in favour of the Electrical Workers and the Plumbers in certain cases, in the present case there was no evidence of the relative performance by the Labourers in such a situation. It may very well be that there is no efficiency

by having a skilled tradesmen perform this work. Thus, although this factor might favour the Electrical Workers and Plumbers, we are inclined in the circumstances of the present case, because of the lack of evidence, to give this factor little weight.

Area Practice

11. As noted earlier, the modules which form the subject matter of the present dispute are a relatively new type of module. The question arises in considering the area practice as to just how different these modules are from other types of modules. In this regard, the evidence presented to the Board concerning area practice was quite clear. Modules containing fire hose cabinets or fire hose cabinets and drinking fountains have, without exception, in the Ottawa area been handled by members of the Plumbers union. Similarly, with respect to electrical modules evidence of area practice was clearly that such modules were handled by the Electrical Workers. The problem that arises in the present case is when such modules are combined into larger units with additional functions added, how relevant is the past practice with respect to the handling of similar materials.

12. In our view, the difference between the present modules and other materials previously used in the Ottawa area is not sufficient to make a distinction in this regard. In fact, we are of the view that the past practice which is used with respect to "simpler modules" is applicable to the more complicated modules used in the present dispute. Accordingly, we find that past practice favours the assignment of the work in dispute to the Plumbers and the Electrical Workers.

Decisions of This Tribunal and Others Tribunals

13. It was the contention of the Labourers in the present case that there were decisions of other tribunals, including the N.J.B., awarding similar work to Labourers. Those decisions, however, are not applicable in the present case. The decisions referred to deal with the handling of appliances at construction sites and we are of the view that the modules in question are not appliances in the sense of those other decisions.

14. There was evidence at the hearing concerning the installation of the modules in question and though the installation of the modules is not part of the present dispute, it is relevant to the determination as to whether or not the modules being handled are materials rather than appliances. Although there is some ambiguity in the evidence, the evidence of skilled employees performing the work on the job site was clearly that the setting into place of the modules relate directly to the plumbing and electrical installations which are subsequently made therein. This distinguishes these modules from appliances.

15. The representative of the Labourers union also relied on a previous decision of this Board in July 1971 with respect to Pigott Construction Company Limited. That decision involved the handling of mechanical equipment, and the Board finding in that case gave part of the work to the Labourers and part to the Plumbers union, and in that sense only helps the Labourers with respect to part of the work involved in the present case. However, we are of the view that that case is also distinguishable because it involves equipment rather than materials which as noted above was clearly demonstrated in the present case. We are, therefore, of the view that no weight can be given to that previous decision of the Board with respect to the assignment in the present case.

16. Having regard to all of the above factors, it is clear that the work in question in the present case is properly being performed by members of the Electrical Workers union or members of the Plumbers union. However, in the circumstances of the present case and in particular having regard to the fact that the request is made by the Labourers union, and having regard to the above finding, we are of the view that the proper disposition of this case is for the Board to dismiss the complaint by the Labourers union and for the Board to decline to make any direction in favour of the Electrical Workers or the Plumbers union.

6019-74-R: Health Sciences Association of the Regional Municipality of Ottawa-Carleton (Applicant) v. ST. VINCENT HOSPITAL (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members J.D. Bell and P.J. O'Keefe.

APPEARANCES AT THE HEARING: Michael Gordon and Charlotte Arens for the applicant; no one appearing for the respondent.

DECISION OF THE BOARD: August 15, 1974.

1. The name "St. Vincent's Hospital (Hospital St. Vincent) Ottawa" appearing in the style of cause of this application as the name of the respondent is amended to read: "St. Vincent Hospital".

2. The applicant in this case has applied to be certified for certain of the employees of the respondent in the following bargaining unit:

All physiotherapists, occupational therapists,
remedial gymnasts, speech therapists,
clinical psychologists or psychometrists,
therapeutic and/or non-supervisory

administrative dietitians in the employ of the respondent in the Regional Municipality of Ottawa-Carleton, save and except for department heads exercising managerial functions and persons above that rank.

Although the respondent did not appear at the hearing in this matter the respondent has agreed with the unit proposed by the applicant. After careful consideration we are of the view that we cannot accept the agreement of the parties in the present case that such a unit is appropriate. Although the Board frequently accepts the agreement of the parties in an application that a certain unit is appropriate the Board has always insisted that there is a limitation of such agreements and that limitation is frequently described in the following terms:

The Board will not allow an agreement of the parties where it does violence to a policy concerning bargaining units.

3. It appears that the Board has not in the past certified or accepted the agreement of the parties with respect to a unit the same as or similar to the one proposed by the applicant in the present case. In that sense the proposed unit does not violate an established policy of the Board with respect to the appropriateness of a proposed unit of employees. On the other hand, the unit proposed does cause us some concern having regard to the Board's well known policy concerning the fragmentation of bargaining units amongst the employees of an employer.

4. In view of the foregoing concern we propose to list this matter for hearing in Ottawa to hear the evidence and the representations of the parties on the appropriateness of the bargaining unit described in paragraph 1 herein. It is clearly desirable for the Board at this stage to make its concern known to the parties, and we therefore propose to set out a number of problem areas which we see as apparent in light of the unit applied for. We wish, however, to make it clear that we do not propose to limit the scope of the hearing to dealing solely with these factors. Accordingly, we would like the evidence and the representations of the parties in the following problem areas:

- (a) The community of interest between the employees in the job classifications listed in the bargaining unit;
- (b) The community of interest or lack of community of interest, whatever the case may be, between the employees affected by the unit and other employees in the employ of the respondent;

- (c) The relationship between the proposed bargaining unit and any other bargaining units resulting either from certifications or collective agreements of employees of the employer;
- (d) The relationship between the proposed bargaining unit and the excluded categories in the usual (although not invariably) description of bargaining units of hospital service employees, and in particular the exclusionary term "technical personnel" used in that bargaining unit. The usual description reads as follows:

All employees of the respondent at its hospital in Ottawa, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period.

For the purposes of clarity, the Board declares that the term "technical personnel" comprises physiotherapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

5. We are also concerned with the language used to describe the proposed bargaining unit and in particular that such a mode of describing a bargaining unit is usually reserved for the description of craft bargaining units. In this regard we would also request the applicant and the respondent to present evidence and representations regarding:

Either

- (a) The entitlement of the applicant to a craft bargaining unit under section 6(2) of the Act;

Or

- (b) Some alternative method of describing the scope of those included in the bargaining unit.

6. This matter is referred to the Registrar to be listed for hearing.

5667-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. SUNNYBROOK HOSPITAL (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Chris G. Paliare and Wilf Peel for the applicant; Tim Sargeant and Miss Heather Laing for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER E. BOYER: August 15, 1974.

1. Pursuant to the decision of the Board dated June 6, 1974, the Board directed the taking of a pre-hearing representation vote in this matter. The vote was taken on June 19, 1974, at which time the ballot box containing the forty seven ballots cast by the persons encompassed in the voting constituency was sealed pending a ruling by the Board with respect to the appropriateness of the bargaining unit.

2. Pursuant to the said decision of the Board dated June 6, 1974, the Board also directed that all non-supervisory persons classified by the respondent as "Paramedical Personnel" be permitted to vote and that their ballots be segregated and not counted pending a further direction of the Board. There would appear to have been fifty-nine persons who cast segregated ballots in this regard.

3. The initial filings with the Board concerning the proposed bargaining unit is as follows:

Unit Proposed by Applicant -

All medical laboratory technologists, technicians and Assistants employed by the Respondent in Metropolitan Toronto, save and except chief technologists, students, office and clerical employees, persons employed

for not more than 24 hours, employees covered by existing collective agreements.

Unit Proposed by Respondent -

All paramedical personnel employed by the Respondent at Toronto, save and except chief technologists, persons above the rank of chief technologists, office and clerical employees, persons covered by subsisting collective agreements between the Hospital and the Service Employees International Union and the International Union of Operating Engineers, nurses covered by a certificate issued by the Ontario Labour Relations Board dated February 27, 1974, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period. For the purposes of clarity paramedical personnel include: Audiometric Technicians; Audio-Visual Technologists; Cardiovascular Technologists and Technicians; Clinical Instructors (Radiology); Dark Room Technicians, Dental Assistants; Dialysis Technicians; ECG Technicians; EEG Technicians; Electronic Technologists; Graphic Artists; Immunology Technologists; Isotope Technologists; Medical Laboratory Technologists and Technical Assistants; Medical Photographers; Pharmacy Technicians and Assistants; Psychological Assistants; Respiratory Function Technologists; Social Work Assistants; Vestibular Technologists and Technicians; X-Ray Technologists, (emphasis added).

4. At all relevant times, it was the position of the respondent that the taking of the pre-hearing representation vote in these circumstances be deferred until the Board had disposed of the question of appropriateness. However, that position was rejected by the majority of the Board in the said decision of the Board dated June 6, 1974.

5. Following the taking of the vote, the Registrar accordingly, by notice dated June 21, 1974 advised the parties that he had set this matter down for hearing before the Board. However, prior to the hearing, by letter dated August 8, 1974, the applicant requested leave of the Board to withdraw its application and in the alternative if such request was denied, it requests that the Board not impose a bar with respect to further applications concerning the bargaining unit in question.

6. In support of its position, the applicant advised the Board as follows:

"1. The applicant in Form I described the appropriate bargaining unit as being;

"All medical laboratory technologists,
technicians and assistants employed

by the Respondent... (save and except certain exceptions)".

The Board has certified bargaining units of a similar description with respect to applications made by the Civil Service Association of Ontario (Inc.). We refer the Board to the following cases:

- (i) Welland County General Hospital -
Board File No. 5719-74-R
where the Board issued a certificate dated June 27, 1974 and described the appropriate bargaining unit as being all medical laboratory technologists, and registered and non-registered laboratory helpers.
- (ii) At the same hospital, i.e. Welland County General Hospital -
Board File No. 5950-74-R
the Board in a certificate dated July 19, 1974 described the appropriate bargaining unit as being all radiology and darkroom technicians save and except certain exceptions.
- (iii) South Waterloo Memorial Hospital -
Board File No. 5411-73-R
here the Board issued a certificate on April 11, 1974 and described the appropriate bargaining unit as being all medical laboratory technologists, all medical laboratory technicians and laboratory assistants save and except certain exceptions.
- (iv) Northwestern Hospital -
Board File No. 6003-74-R
wherein the Board issued a certificate describing the appropriate bargaining unit as being all medical laboratory technologists, technicians and assistants.
- (v) Northwestern Hospital -
Board File No. 6071-74-R
where the Board held a hearing on July 31, 1974 but has not issued its decision

as yet. In this particular case the parties agreed that the appropriate bargaining unit was all X-ray technologists, inhalation therapists, E.C.G. technicians and darkroom assistants.

2. It can be seen from the above noted cases that the Board has in the past allowed the Applicant to act as the bargaining agent for a relatively narrow bargaining unit. However, at the hearing of July 31, 1974 in the Northwestern Hospital case, Board File No. 6071-74-R (referred to above) the chairman of that Board, Mr. Rory Egan, expressed the concern of the Board that in the future there should be a broader bargaining unit in hospitals which would encompass all para-medical technicians. Our client, for purposes of the instant application, fully agrees with the comments of Mr. Egan.
3. Only after discussions with the solicitors for the Respondent, both at the Examiner's hearing and afterwards, did it become evident that the appropriate bargaining unit was larger than that as set out by the Applicant in Form 1. It is readily apparent that since the filing of the Application and the Reply, both the Applicant and the Respondent have changed their views as to the constitution of the appropriate bargaining unit. The letter from the solicitors of the Respondent to the Board, dated August 1, 1974, is evidence of that fact.
4. The Applicant emphasizes that at the time this application was made the Applicant believed that the description of the bargaining unit as set out in Form I was the appropriate unit. The Applicant formed this belief after diligent enquiries prior to the filing of this application and also, because of the other Board decisions referred to above. It was only after subsequent discussions that the Applicant discovered that it had underestimated the size of the appropriate bargaining unit."
7. At the hearing of this matter on August 13, 1974, counsel for the applicant agreed with the Board's suggestion that the bargaining units as referred to in its letter dated August 8, 1974, were in fact issued "upon agreement of the parties". In this regard, we had occasion to stress to the parties that although the Board has up to the present time seen fit to incorporate in its decisions the agreement of the parties involving bargaining units for specific groups of technical employees in

hospitals, this in no manner is to be taken to imply that the Board is party to such an agreement. Indeed, it is clear to us that such bargaining units given on agreement of the parties have no precedent value and it may very well be that at some future time the Board may not see fit to accomodate the parties in this regard.

8. It is however, the contention of the counsel for the applicant that the applicant did not have cause to anticipate and defect as regards the appropriateness of its proposed bargaining unit until so cautioned by the learned chairman on July 31, 1974, in the manner as set out in paragraph #2 of its letter dated August 8, 1974, quoted above. Counsel for the applicant further submits that the applicant now upon due reflection, is essentially prepared to accept the respondent's position with respect to its proposed bargaining unit. Counsel for the respondent, on the other hand, submits that in these circumstances, where not only the vote has been ordered out has in fact taken place, it is the Board's normal practice to dismiss the application and to impose a six-month bar in relation to future applications.

9. In this regard, counsel for the respondent drew our attention to the Patchoque Plymouth Hawkesbury Mills, A Division of Amoco Canada Petroleum Company Ltd. case [1972] OLRB Rep. 747, where at page 749, the Board stated as follows:

"In almost every instance where the Board has imposed such a bar, a representation vote has been directed and conducted even though the ballots may not have been counted, see, for example, The Stanley Steel Company Limited case, OLRB Rep. February 1972, p. 181. Where the Board has directed a representation vote and a trade union requests leave to withdraw its application for certification before the representation vote is conducted, the Board has in the past dismissed the application for certification and has not imposed a bar to further applications but has drawn the attention of the parties to the principle enunciated in the Mathias-Quellette case, 56 CLLC ¶18,026; C.L.S. 76-485. This principle places the burden on the applicant of showing why the Board should entertain a subsequent application for certification by the same trade union with respect to any of the employees affected by the earlier unsuccessful application for certification. A third example of the type of situation where the Board has imposed a bar is to be found in the J.W. Crooks Company case, OLRB Rep. February 1972, p. 126, where a trade union made four unsuccessful applications for the same

unit of employees in a period of a little more than three months."

10. Counsel for the applicant, on the other hand, referred us to the General Fraser Limited case 63 CLLC ¶16,294 p. 1219 where at page 1220 the Board stated:

".....it is not the usual practice of the Board to impose a bar on an unsuccessful applicant who fails to produce sufficient evidence of membership at a hearing to entitle it to a vote or who is dismissed in a pre-hearing representation vote prior to the vote being directed where there is no incumbent bargaining agent. The respondent in the instant case has urged the Board to change its policy. If the Board were to accede to the respondent's request, section 77(2)(i) (now Section 92[2][i]) of the Act would then be applied in a punitive manner contrary to the statement contained in the Hydro Electric Commission of Hamilton case referred to above (CCH Canadian Labour Law Reporter, Transfer Binder 1955-59 ¶16,120). We are of the opinion that to hold otherwise would be to defeat the purpose of the Act which may be briefly described as follows: to determine the true wishes of the employees in an appropriate bargaining unit for the purpose of gaining recognition of their chosen trade union as bargaining agent and then to promote and preserve a healthy and active bargaining relationship between the bargaining agent and the employer consistent of course with the wishes of the employees."

11. Having carefully reviewed the peculiar and unique circumstances of this case, we do not share the opinion of counsel for the respondent that the applicant's action in these proceedings represent the classic case of a trade union attempting to withdraw its application in anticipation of its defeat at the polls. In this regard it is to be noted that we are dealing here not with an "ordinary" application for certification but rather with an application requesting the taking of a pre-hearing vote. Further, we are satisfied that at the time of the filing of such application, the applicant had a bona fide belief that its proposed bargaining unit would subsequently be found to be appropriate by the Board such that its chances of success at the vote conducted in relation to the voting constituency as determined by the majority of the Board, were relatively good. However, subsequent events would appear to have caused the applicant to take another view of the situation during the course of which it is now prepared for all practical

purposes to accept the respondent's position concerning appropriateness. In our opinion, such action on the part of the applicant is particularly commendable in light of the Board's growing concern regarding the multiplicity of technical bargaining units in the hospital setting.

12. Having regard therefore to all of the circumstances and having reviewed the principles above cited, we are not prepared in the exercise of our discretion as set out under Section 92(2)(i) of the Act, to impose a bar to this application as requested by the respondent.

13. This application is accordingly dismissed.

DECISION OF BOARD MEMBER H.J.F. ADE: August 15, 1974.

I dissent for reasons to be given later in writing.

4968-73-M: Canadian Union of Public Employees, and its Local 268 (Applicant) v. F. J. DAVEY HOME FOR THE AGED (ALGOMA) (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: C. S. Dungey and W. A. Acton for the applicant; R. C. Fillion for the respondent.

DECISION OF THE BOARD: August 20, 1974.

1. This is an application made under section 95(2) of the Act wherein it was alleged that certain persons employed by the respondent were employees for purposes of the Act.

2. At the outset of the hearing scheduled in this matter, counsel for the respondent submitted that the Board's decision dated January 21, 1974 authorizing the appointment of an examiner should have been confined to "changes" in duties and responsibilities since the parties hereto had entered into a collective agreement dated May 25, 1972. In other words, it was alleged that since the parties had heretofore entered into an agreement, the application should be treated as untimely.

3. It appears that during the course of the negotiation of this agreement a matter with respect to the status of certain employees for purposes of the Act was discussed at the bargaining table. The applicant trade union insisted that these persons be included in the bargaining unit as they did not exercise managerial functions as contemplated by section 1(3)(b) of the Act. The respondent argued to the contrary and insisted that they be excluded from the scope of the bargaining unit. The applicant indicated that at the time this matter

was the only issue inhibiting the parties from entering into a collective agreement. The applicant therefore decided that rather than delay the effectuation of the terms of a new agreement it would enter into a collective agreement without final resolve of the issue of the disputed persons. The agreement, once entered into, was permitted to run its course without further mention of the issue of the status of the persons concerned.

4. In December 1973 when the collective agreement was about to expire and the parties entered into negotiation with the view to renewal of the same, the issue pertaining to the disputed status of these persons as employees for purposes of the Act arose once again. When faced with the respondent's unaltered position, the applicant thereupon initiated these proceedings.

5. The Board at the hearing reserved its decision on the preliminary question raised by the counsel for the respondent. In the interim, the Board has reviewed the relevant cases adduced with respect to the timeliness of applications under section 95(2) of the Act. As a result of this review, the Board proposes to clarify some of the statements made by the parties at the hearing which may in future remove some of the difficulties in comprehending the Board's past policy statements.

6. Simply put the Board has indicated that where the parties to a collective bargaining relationship have put their minds to the issue of the disputed status of employees for purposes of the Act and have resolved the question by their agreement (either expressly or by necessary implication) the Board will not permit any one party to unilaterally withdraw from a settlement by means of an application under section 95(2) of the Act. In such instances, the Board's practice is to confine the scope of the examiner's inquiry to "changes" in duties and responsibilities since the date of the agreement.

7. The Board in applying this policy has indicated that where a question has arisen with respect to the status of persons as employees for purposes of the Act during the course of negotiations for a collective agreement and the parties enter into a collective agreement without resolving the question, the Board will deem any subsequent application under section 95(2) as untimely and will confine the examiner's appointment to "changes" in duties and responsibilities. Only in circumstances where the party making the challenge reserves its right to make an application under Section 95(2) as a condition precedent to the entering into of the agreement will the Board treat the application in the ordinary manner. That is to say, failure by a party to expressly reserve its challenge is deemed acquiescence to the other party's position and thereafter inhibits the former from gaining relief under section 95(2) except as to "changes" in duties and responsibilities.

8. The Board has reviewed this particular policy with some concern. Aside from the issue of the competence of this Board to impose such fetters to its jurisdiction without any explicit legislative direction, we are of the view that drawing an inference of an agreement on the status of disputed persons in the circumstances described herein is an unwarranted result that defeats the objective of section 95(2). The effect of a party's failure to reserve its status to apply under section 95(2) upon entering into a collective agreement where a legitimate question has arisen with respect to the status of employees is two-fold. Firstly, the Board may very well be creating an artificial encumbrance inhibiting the consummation of a collective agreement on all other matters save the issue of the disputed status of employees. The effect of this is to compel a party either to capitulate on the issue or to apply under section 95(2). If the former option is chosen, the party is to all intents and purposes foreclosed from a remedy under the Act. If the latter option is chosen, then effectuation of the terms and conditions of employment under a new agreement is delayed pending the exhaustion of the Board's processes. And secondly, by putting this election to a party during the course of bargaining for a collective agreement in the manner aforesaid, a party to the negotiations may insist that the persons in dispute be included or excluded from the bargaining unit (as the case may be) on the assumption that they may very well be employees for purposes of the Act. In that event, the Board in adhering to its policy may have played a significant role in converting a "status question" into a negotiation dispute. Or alternatively, the Board may have abdicated its role in defusing a potential bargaining dispute by failing to assert jurisdiction to resolve a status question.

9. Although there may very well be collective bargaining considerations for restricting applications under section 95(2) filed immediately upon the entering into of a collective agreement where a question has been raised and negotiated to an impasse, we are of a view, for purposes of this application, that the relative merit of that particular question should be dealt with as it may arise in future cases. Nevertheless, this panel of the Board is of the opinion that where a question arises during the negotiations for a collective agreement and notwithstanding the past treatment by the parties of the particular question, an application under section 95(2) should not be restricted by the Board's past policy considerations. In other words, in the circumstances where parties are engaged in negotiations for a collective agreement their past treatment of the question should not operate to the prejudice of the party seeking relief under section 95(2). The Board therefore does not intend to be bound by this particular policy consideration in future applications in like circumstances. It therefore follows that in future the Board will not be disposed to confine the examiner's appointment to "changes" in duties and responsibilities of the persons in dispute.

10. The Board also indicated to the parties at the hearing that it would provide some procedural guideline with respect to the treatment of objections to the timeliness of applications under section 95(2). Where a respondent party to an application under section 95(2) fails upon notice to file objection to the timeliness of the application accompanied by explicit reasons therefore, the Board will proceed in the ordinary way and will authorize the examiner to inquire without limitation into the duties and responsibilities of the named persons in dispute. Once so authorized, the parties will be deemed to have waived thereafter (save upon legitimate excuse) further objection to the timeliness of the application. However, upon the receipt of a timely objection and that issue is disputed, the Board will in most instances direct the matter be put on for hearing prior to authorizing the appointment of an examiner. There may be circumstances however, such as the remoteness of the employer's premises from the Board's hearing rooms in Metropolitan Toronto that may induce us to defer hearing the objection until after the completion of the examiner's inquiry. In such instances, the Board will direct the examiner to inquire into the duties and responsibilities of the disputed persons and participation by the respondent party in such inquiry will not be deemed to be a waiver of objection.

11. We have also reviewed certain submissions made by counsel for the respondent during the course of the hearing with respect to the issue of disputed classification of employees described in the collective agreement filed with the Board. More particularly, in dealing with issues under section 95(2) the Board inquires into the merits of duties and responsibilities of "persons" and not classifications of employees. It may very well be that a person whose status as an employee for purposes of the Act is questioned may fall into a category excluded from the collective agreement. Whether or not this is the case, is not a matter for this Board to decide but is an issue reserved to the exclusive jurisdiction of a Board of Arbitration. The fact that a person may appear to be excluded under the terms of a collective agreement will not preclude the Board from asserting its jurisdiction on a question as to whether that person is an employee for purposes of the Act.

12. In disposing of the instant application the Board is not unmindful that it may be imposing an unfair advantage upon the respondent to assert jurisdiction to entertain the application on its merits in light of the Board's past policy consideration. Having regard to the Board's position as described in paragraph 9 herein of not being found by these considerations in future applications in like circumstances, we are of the view that the instant application should be dismissed.

5830-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. JEV CONTRACTING LTD. (Respondent) v. Labourers' International Union of North America, Local Union 597 (Intervener).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: A. M. Minsky and M. J. Reilly for the applicant; W. J. McNaughton and J. Murphy for the respondent; no one appeared for the intervener.

DECISION OF THE BOARD: August 23, 1974.

. . . .

3. The Board further finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act.

4. The applicant is seeking certification for a bargaining unit of "all construction employees of the respondent engaged in residential concrete forming construction in the Board's geographic area #9, save and except non-working foremen, persons above the rank of non-working foreman, office and clerical staff, engineering staff and security guards."

5. The respondent proposes that the appropriate bargaining unit is "all employees of the respondent engaged in concrete forming construction in Board area #9, save and except non-working foremen, persons above the rank of non-working foreman, office and clerical staff, engineering staff and security guards."

6. In opposing the description of the bargaining unit requested by the applicant, the respondent stated that it is engaged in commercial and industrial concrete forming as well as residential forming. The respondent argues that because crews move freely between these three types of construction and have a community of interest, the bargaining unit sought by the applicant is not appropriate. The respondent also submits that the applicant is not the appropriate bargaining agent.

7. The respondent informed the Board that its business is essentially comprised of concrete forming with sixty per cent of its business being conducted in residential forming and forty per cent of its business being conducted in commercial and industrial forming. The job which forms the subject matter of this application is residential concrete forming. However, the respondent argued that the same crews move freely between both types of jobs with the same chain of command, using the same type of equipment and exercising the same skills. In addition, because of the

foregoing facts, the respondent argued that it would split its business and force it to change its method of operation if the Board were to issue a certificate to the applicant solely with respect to residential concrete forming.

8. The applicant argues that it is entitled to be certified for a bargaining unit it is seeking in order to recognize the distinction, which the Board has acknowledged, between the internal work jurisdictions of the applicant and Local 506 of the Labourers' International Union of North America. Further, the applicant argues that if the Board were to grant certification in this application in the terms proposed by the respondent then this would have the effect of cutting into the work jurisdiction of Local 506 of the Labourers' International Union of North America which has jurisdiction within the field of industrial and commercial concrete forming.

9. The decisions of the Board in the Peniche Construction Forming case, OLRB REP, 208 and the Toronto Zenith Contracting Limited case, OLRB File #4536-73-R, decision dated April 5, 1974, determined that bargaining units of "all employees of the respondent engaged in concrete forming on residential building projects in the Board's geographic area #8" were appropriate for collective bargaining with respect to the applicant herein. Such a bargaining unit was found to be appropriate, inter alia, having regard to the respective work jurisdictions of the applicant and Local 506 of The Labourers' International Union of North America and the pattern of collective bargaining which had developed in the Board's geographic area #8.

10. In the instant application, the Board's geographic area #9 is affected. Local 597 of the Labourers' International Union of North America normally organizes and represents construction labourers in this geographic area. Only rarely does either the applicant or Local 506 of the Labourers' International Union of North America organize employees in the Board's geographic area #9.

11. There is no evidence before the Board to support the assertion by the respondent that the applicant is not the appropriate bargaining agent. Similarly, there is no evidence before the Board that there is a pattern of collective bargaining in the Board's geographic area #9 for either the applicant's proposed bargaining unit or the respondent's proposed bargaining unit. Thus one of the reasons for the determination of the bargaining unit in the Peniche Construction Forming case, supra, and the Toronto Zenith Contracting Limited case, supra, is absent in the instant application.

12. The Board finds no reason in the instant application to determine that the bargaining unit requested by either the applicant or the respondent is appropriate for collective bargaining.

13. Having regard to the representations of the parties, the Board finds that the employees affected by this application are construction labourers. In our view, having regard to the manner of describing the appropriate bargaining unit in paragraph 14 herein, it is unnecessary to exclude the classifications of office and clerical staff, engineering staff and security guards.

14. Having regard to the foregoing, the Board sees no reason, on the evidence and representations before it, not to describe the appropriate bargaining unit in the terms normally used to describe the bargaining unit granted in the Board's geographic area #9 to Local 597 of the Labourers' International Union of North America.

15. Accordingly, the Board further finds that all construction labourers in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . . .

17. A certificate will issue to the applicant.

5840-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. JEV CONTRACTING LTD. (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: A. M. Minsky and M. J. Reilly for the applicant; W. J. McNaughton and J. Murphy for the respondent.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY:
August 23, 1974.

. . . .

2. The Board further finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act.

3. The applicant is seeking certification for a bargaining unit of "all construction employees of the respondent engaged in residential concrete forming construction in the Board's geographic area #8, save and except non-working foremen, persons above the rank of non-working foreman, office and clerical staff, engineering staff and security guards.

4. The respondent proposes that the appropriate bargaining unit is "all employees of the respondent engaged in concrete forming construction in Board area #8, save and except non-working foremen and persons above the rank of non-working foreman, office and clerical staff, engineering staff and security guards."

5. In opposing the description of the bargaining unit requested by the applicant, the respondent stated that it is engaged in commercial and industrial concrete forming as well as residential forming. The respondent argues that because crews move freely between these three types of construction and have a community of interest, the bargaining unit sought by the applicant is not appropriate. The respondent also submits that the applicant is not the appropriate bargaining agent.

6. The respondent informed the Board that its business is essentially comprised of concrete forming with sixty per cent of its business being conducted in residential forming and forty per cent of its business being conducted in commercial and industrial forming. The job which forms the subject matter of this application is residential concrete forming. However, the respondent argued that the same crews move freely between both types of jobs with the same chain of command, using the same type of equipment and exercising the same skills. In addition, because of the foregoing facts, the respondent argued that it would split its business and force it to change its methods of operation if the Board were to issue a certificate to the applicant solely with respect to residential concrete forming.

7. The applicant argues that it is entitled to be certified for a bargaining unit it is seeking in order to recognize the distinction, which the Board has acknowledged, between the internal work jurisdictions of the applicant and Local 506 of the Labourers' International Union of North America. Further, the applicant argues that if the Board were to grant certification in this application in the terms proposed by the respondent then this would have the effect of cutting into the work jurisdiction of Local 506 of the Labourers' International Union of North America which has jurisdiction within the field of industrial and commercial concrete forming.

8. The decision of the Board in the Peniche Construction Forming case, OLRB REP. 208 and the Toronto Zenith Contracting Limited case, OLRB File #4536-73-R, decision dated April 5, 1974, determined that bargaining units of "all employees of the respondent engaged in concrete forming on residential building projects in the Board's geographic area #8" were appropriate for collective bargaining with respect to the applicant herein. Such a bargaining unit was found to be appropriate, inter alia, having regard to the respective work jurisdiction of the applicant and Local 506 of The Labourers' International Union of North America and the pattern of collective bargaining which had developed in the Board's geographic area #8.

9. In the instant application, the Board's geographic area #8 is affected. There is no evidence before the Board to support the assertion by the respondent that the applicant is not the appropriate bargaining agent. On the other hand there is evidence before the Board of a pattern of collective bargaining in the Board's geographic area #8 with respect to bargaining units of all employees engaged in concrete forming on residential building projects which are represented by the applicant.

10. While it may be true that the respondent would have to change its method of operation if the Board were to issue a certificate to the applicant solely with respect to residential concrete forming, there is the countervailing consideration of the existing work jurisdiction of the applicant and Local 506 of the Labourers' International Union of North America and the present pattern of collective bargaining in the field of concrete forming on residential building projects. In our view, the existing state of affairs in the construction industry is surely a more persuasive argument when weighed against a possible personal adjustment by the respondent.

11. Having regard to the decisions of the Board in the Peniche Construction Forming case, supra, and the Toronto Zenith Contracting Limited case, supra, and the facts of this application, we further find that all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

12. In our view, having regard to the manner of describing the bargaining unit in paragraph 11 herein, it is unnecessary to exclude the classifications of office and clerical staff, engineering staff and security guards.

13. We are satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on June 17, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

14. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER E. BOYER: August 23, 1974.

I dissent in part. For the reasons given in the Peniche Construction Forming case, supra, and the Toronto Zenith Contracting Limited case, supra.

5802-74-R: Association of Commercial and Technical Employees, Local 1704, C.L.C. (Applicant) v. NATIONAL COMMUNICATIONS AND DATA COMPANY LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Harold F. Caley, J.P. Gallie, E. Arnold for the applicant; Richard Evans, W.T. Houston and George Adams for the respondent; Robin B. Cumine and Jillian Qually for the objectors.

DECISION OF GEORGE S.P. FERGUSON AND O. HODGES: August 26, 1974.

1. In accordance with the decision of the Board dated June 19, 1974, a representation vote was conducted on July 12, 1974.

2. The revised voters' lists contained 22 names. Twenty-one persons voted. Upon counting the ballots it was ascertained that two ballots were marked with an "X" over the printed word "NO" and there was no mark inserted in either of the two blank spaced provided on the ballot. The Returning Officer of the Board ruled that these two ballots were spoiled. It appears that this ruling was not inconsistent with past practices in other cases but the ruling of the Returning Officer did not satisfy all of the parties having status in this application. The validity of these two ballots directly affects the position of the applicant union.

3. The Board conducted a hearing on August 12, 1974, when full opportunity was given to Counsel for all parties to make representations on the validity of the two ballots referred to above.

4. The Board has been referred to four previous cases when the Board dealt with the validity of ballots marked in a manner inconsistent with instructions given for the purpose of conducting a representation vote. In each of these cases the facts are not identical to those found in this case. In the National Starch and Chemical Co. (Canada) Ltd. case 1968 OLRB M.R. June, p. 285, the voter wrote in the word "NO" in the blank space beside the printed word "NO". In the Success Display Limited case 1971, OLRB M.R. October, p. 636, the voters inserted an "X" in two places, one "X" being placed over the printed word "YES" and one "X" being placed in the blank space beside the printed word "YES". In the Locours Lumber Company Limited case 1972, OLRB M.R. November, p. 982, the voter used a tick mark (✓)

instead of an "X". In the Fruehauf Trailer Company of Canada Limited case, OLRB, M.R. April, 1974 p. 254, the ballots in question contained either the word "YES" in the blank space beside the printed word "YES" or a check mark (✓) instead of an "X" in the blank space.

5. As a result of the cases referred to above the Board has adopted and applied two basic tests for determining the validity of a ballot. The first test is whether or not the ballot as marked by the voter discloses the identity of the voter. The second test is whether or not the ballot, as marked, clearly indicates the choice of the voter. If both of these tests are satisfactorily answered by NO and YES respectively, then the ballots have been ruled as being valid. In each of the cases referred to above the Board found that the ballots were valid.

6. Quite clearly in this case there is no indication of any disclosure of the identity of the two persons whose ballots were not counted. The remaining question to be determined is whether the action of the voter, in marking the ballot with an "X" over the printed word "NO" clearly indicated an intention to vote in favour of or against the application union.

7. It is our view that there exists a degree of doubt as to whether or not the two voters have clearly indicated their choice by marking their ballots in the manner outlined above. There are two reasonable and contrary arguments on the conclusion which one should reach. The evidence does not disclose any failure on the part of the returning officer to properly instruct the voters on the manner in which ballots should be marked. However, we believe it is reasonable to conclude that there may have been some confusion in their minds. We are not satisfied that both of the tests prescribed in the National Starch and Chemical Co. (Canada) Ltd. case have been satisfactorily answered.

8. Having regard to the particular circumstances of this case the Board is of the view that this is a case where the discretionary power of the Board under Section 92(5) of the Labour Relations Act should be exercised. Accordingly, we direct that another representation vote shall be conducted.

9. The matter is referred to the Registrar for this purpose.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: August 26, 1974.

1. I dissent.

2. I am in agreement that the tests applied by the Board in determining whether a ballot is spoiled or valid are reflected in paragraph 5 of the majority decision.

3. Having regard that such tests are applicable, however, I would find that the marking of the ballots with an "X" over the printed word "NO", clearly indicates an intention by the two voters to vote against the applicant union.

4. It follows from my decision, therefore, that these two ballots should not be found to be spoiled, but should be recorded as votes against the union, with the resulting consequences therefrom.

3047-72-U: John M. Lussier (Complainant) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (Respondent).

- and -

3048-72-U: Edwin Steven Currie (Complainant) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (Respondent).

BEFORE: O.B. Shime, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: P.K. McWilliams, John M. Lussier and Edward S. Currie for the complainants; L.C. Arnold, T. Berry and C. Howard for the respondent.

DECISION OF THE BOARD: August 7, 1974.

. . .

2. The above applications are hereby consolidated.

3. The complainants in this consolidated matter allege that they were dealt with by the respondent trade union contrary to section 71(2) of The Labour Relations Act because they took "action outside of the remedies as outlined under the provisions of section 230 of the United Association Constitution", and that on October 17, 1972, they were found guilty of that charge by the union and fined \$100.00.

4. The relevant provisions of section 71(2) are as follows:

71.-(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,

- (a) discriminate against a person in regard to employment or a term or condition of employment;
- or

- (b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under this Act or because he has made an application or filed a complaint under this Act or because he has participated or is about to participate in a proceeding under this Act.

5. Section 230 of the union constitution requires that members of the trade union not resort to "court proceedings of any description, in any manner pertaining to this organization or its local unions,... until all remedies provided for within the (union's constitution) have been fully exhausted".

6. On August 1, 1972, the complainants made an application under section 79 of The Labour Relations Act alleging that the trade union had violated section 79(1)(a) of the Act because it refused to show the complainants certain out-of-work lists or to issue a referral slip so that the complainants could obtain employment. Those applications were subsequently withdrawn. Prior to the withdrawal the complainants were charged before the trade union with violating section 230 of the union's constitution because they took remedies outside of the union's constitution.

7. There were other charges against the complainants, but they were found not guilty. Those charges do not concern us; however, they were found guilty of the charge of "seeking legal assistance", which relates to the actions of the complainants in bringing the section 79 application to this Board.

8. There were certain issues raised as to whether the finding of guilty to "seeking legal assistance" relates to the bringing of the section 79 applications to this Board. We are of the view that the findings of trade union tribunals are not to be assessed on the basis of the standards that one might expect from legally trained persons, but on the standards of working men governing their own affairs. Nothing in the language of the union's constitution leads us to believe that the finding of "seeking legal assistance" was for any other reason than that the complainants took procedures under section 79 of The Labour Relations Act.

9. The complainants subsequent to their conviction and notwithstanding that they had pleaded guilty before the trade union tribunal,

then brought this application alleging a violation of section 71(2) of the Act. During the course of the hearing in this matter there was considerable evidence adduced as to the merits of the complainant's dispute with the trade union and its officials. However, we do not think that the merits of that dispute are relevant to the issue before us, but rather we think that this case raises certain policy considerations for determination.

10. The legislature under section 71(2) of the Act has attempted to remove any impediments to parties utilizing this Board for the purposes contained within The Labour Relations Act. It is the intent that there be complete freedom for persons who wish to avail themselves of the benefits and remedies contained in The Labour Relations Act.

11. On the other hand the courts in certain cases have required parties to exhaust their remedies and unless there is a departure from natural justice certain courts have been loathe to interfere with the self-regulation of voluntary associations.

12. There is therefore a conflict in this matter as to whether the Board should enforce a policy which would allow persons complete and free access to this Board, or whether the Board like a court should recognize the right of a trade union to conduct its own internal affairs before resort is had to this Board.

13. On balance we think that we should enforce the legislative policy of granting access to this Board in order to remedy matters of industrial relations. It may well have been that on the original application that the respondent trade union could have successfully submitted that the Board defer a decision on the matter or adjourn the matter until the parties had exhausted their remedies before the trade union's internal tribunals. But that is something quite apart from penalizing a person merely because he has filed an application with this Board. If employees are made to fear some form of retaliation for exercising their rights under this Act, either by the trade unions or by the employers, then the purposes of the Act will not be accomplished. Accordingly, it is our determination that the trade union has violated section 71(2)(b) of The Labour Relations Act by imposing a "pecuniary or other penalty" on the complainants because they "filed a complaint under this Act". Accordingly, and despite the plea of guilty by the complainants to the trade union tribunal, we determine that the trade union shall forthwith reimburse the complainants for the fines levied pursuant to the charges and findings made against them, and that any record of their being penalized for that offence be expunged from the records of the trade union, and that the trade union cease and desist any further efforts in attempting to penalize the complainants for taking or for pursuing remedies available under this Act.

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5439-74-R: International Molders and Allied Workers Union (Applicant) v. LOC - Pipe Division of Lake Ontario Concrete Industries, a division of Kilmer Van Nostrand Co. Limited (Respondent) v. Labourers' International Union of North America, Local 597 (Intervener). (REQUEST DENIED).

5938-74-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Dempsters Bread Division of Corporate Foods Limited (Respondent). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

4989-73-U: Kenneth Hughes (Complainant) v. Canadian Union of Public Employees and its Local 922 and The Board of Education for the Borough of North York (Respondents). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING AUGUST 1974

BARGAINING AGENTS CERTIFIED DURING AUGUST

No Vote Conducted

4172-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Del Zotto Enterprises Limited (Respondent) v. Sardina Investments Limited (Respondent) v. Demiro Construction Limited (Respondent) v. Elru Payroll Company Limited (Respondent) v. Jantro Corporation Limited (Respondent) v. Zaph Construction Limited (Respondent).

- and -

4187-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Del Zotto Enterprises Limited (Respondent) v. Sardina Investments Limited (Respondent) v. Demiro Construction Limited (Respondent) v. Elru Payroll Company Limited (Respondent) v. Jantro Corporation Limited (Respondent) v. Zaph Construction Limited (Respondent).

- and -

4188-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Del Zotto Enterprises Limited (Respondent) v. Sardina Investments Limited (Respondent) v. Demiro Construction Limited (Respondent) v. Elru Payroll Company Limited (Respondent) v. Jantro Corporation Limited (Respondent) v. Zaph Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondents in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (no employees in the unit).

(1974) 2 OLRB M.R. - PAGE 533.

5456-74-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. CIP Foods Ltd. (Respondent).

Unit: "all office employees of the respondent at Alexandria save and except office manager, persons above the rank of office manager, assistant superintendent, foreman, chief engineer, assistant chief engineer, field-men and those employees referred to in a Collective Agreement between Local Union 304 of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5650-74-R: Ontario Nurses' Association (Applicant) v. Deep River & District Hospital (Respondent).

Unit #1: "all Registered and Graduate nurses employed by the respondent in a nursing capacity at Deep River save and except the Director of Nursing, the Head Nurse of Medical Services and persons above those ranks, and persons regularly employed for not more than 24 hours per week." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all Registered and Graduate nurses employed by the respondent in a nursing capacity for not more than 24 hours per week save and except the Director of Nursing, the Head Nurse of Medical Services and persons above those ranks." (18 employees in the unit).

5681-74-R: Ontario Nurses' Association (Applicant) v. Toronto East General and Orthopaedic Hospital Inc. (Respondent) v. Service Employees Union, Local 204 (Intervener) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed by the Toronto East General and Orthopaedic Hospital Inc. engaged in a nursing capacity, save and except head nurses and those above the rank of head nurse." (267 employees in the unit). (THE BOARD NOTED THAT THE PARTIES HAVE AGREED THAT THE REFERENCE TO HEAD NURSE AT PAGE 3 LINE 28 OF THE EXAMINER'S REPORT IS IN ERROR AND THAT THE REFERENCE SHOULD BE TO ASSISTANT DEPARTMENTAL SUPERVISOR.).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5775-74-R: Canadian Construction, Building Maintenance and General Workers' Union (N.C.C.L.) (Applicant) v. Aselford-Martin Ltd. (Respondent) v. Labourers' International Union of North America, Local 527 (Intervener).

Unit #1: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5830-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Jev Contracting Ltd. (Respondent) v. Labourers' International Union of North America, Local Union 597 (Intervener).

Unit: "all construction labourers in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 562.

5840-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Jev Contracting Ltd. (Respondent).

Unit: "all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." 14 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 564.

5859-74-R: The International Brotherhood of Electrical Workers Local 804 (Applicant) v. Tecumseh Electric (Windsor) (Respondent) v. Group of Employees (Objectors).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5904-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. J. E. Drywall & Lathing Company Limited (Respondent) v. Wood, Wire and Metal Lathers International Union, Local 562 (Intervener).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

5925-74-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Pro-Eng. Builders Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5981-74-R: Toronto Printing Pressmen & Assistants' Union Local 10 subordinate to the International Printing and Graphic Communications Union (Applicant) v. Modern Album of Canada Limited (Respondent).

Unit: "all pressmen, assistant pressmen, cameramen, preparatory workers and their apprentices in the employ of the respondent in Metropolitan Toronto, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

5999-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Canada Building Materials Company (Respondent).

Unit #1: "all employees of the respondent working at or out of Wood-bridge, save and except foremen, persons above the rank of foreman, dispatchers, watchmen, technical staff, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (68 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

6032-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Transway Steel Buildings Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6037-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Desourdy (Ontario) Limited (Respondent).

Unit: "all employees of the respondent at Kingston save and except foremen, persons above the rank of foreman, office and sales staff." (74 employees in the unit).

6049-74-R: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L., C.I.O., C.L.C. (Applicant) v. Canadian Home Products Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees of the respondent at Niagara Falls, save and except Traffic Manager and those above the rank of Traffic Manager and the secretary to the Plant Manager." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6059-74-R: Labourers' International Union of North America, Local 837 (Applicant) v. Roy N. Waite Construction (Respondent) v. Group of Employees (Objectors).

Unit: "all construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6084-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. R. E. Hodgins Industries Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6085-74-R: Canadian Union of Public Employees (Applicant) v. The Hydro-Electric Commission of the Township of Atikokan (Respondent).

Unit #1: "all employees of the respondent in the Township of Atikokan, save and except non-working foremen, persons above the rank of non-working foreman, confidential secretary and persons regularly employed for not more than twenty-four hours per week." (5 employees in the unit).

Unit #2: "all employees of the respondent in the Township of Atikokan regularly employed for not more than twenty-four hours per week, save and except non-working foremen, persons above the rank of non-working foreman and confidential secretary." (2 employees in the unit).

6090-74-R: International Beverage Dispensers' and Bartenders' Union, Local 280, of The Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Hollywood Tavern (Respondent).

Unit: "all full time and part time tap men, bartenders, beverage waiters, male and female bar boys and improvers of the respondent in Metropolitan Toronto, save and except manager and those above the rank of manager." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6104-74-R: Retail Clerks Union, Local 486 (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of Adams Furniture Limited in Ottawa, save and except managers and persons above the rank of manager." (12 employees in the unit).

6107-74-R: Laundry, Dry Cleaning & Dye House Workers International Union, Local 351 (Applicant) v. Maple Leaf Cleaners Limited operating as National Sanitary Supply (Respondent).

Unit: "all employees of the respondent at its plant in Stoney Creek, save and except routemen, supervisors, persons above the rank of supervisor, office and sales staff, students employed for the school vacation period and persons regularly employed for not more than twenty-four hours per week." (14 employees in the unit).

6110-74-R: International Printing and Graphic Communications Union (Applicant) v. The St. Catharines Standard Limited (Respondent) v. International Typographical Union, Local 416 (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in St. Catharines, Ontario, save and except foremen, persons above the rank of foremen, office, sales and editorial staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and employees covered by existing collective agreements." (73 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT EDITORIAL STAFF INCLUDES EDITORIAL WRITERS, EDITORS, REPORTERS, PHOTOGRAPHERS, DESK MEN AND LIBRARY PERSONNEL.).

6114-74-R: Labourers International Union of North America Local 493 (Applicant) v. Kosmack & Price (Respondent) v. Local Union 800 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Intervener).

Unit: "all construction labourers in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6115-74-R: Labourers' International Union of North America Local 607 (Applicant) v. Robertson Building Systems Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of twenty-miles of the Kapuskasing post office, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6118-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. W. A. Stephenson Construction Co. Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6121-74-R: Labourers International Union of North America Local Union 493 (Applicant) v. Bedard - Girard Ltd. (Respondent) v. Local Union 1687 of the International Brotherhood of electrical Workers (Intervener).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by the alleged collective agreement between the Sudbury Electrical Contractors Association and the intervener effective March 11, 1974." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6128-74-R: Canadian Union of Public Employees (Applicant) v. The Shaver Hospital for Chest Diseases (Respondent).

Unit: "all office and clerical employees of the respondent at St. Catharines, save and except Controller, Administrative Assistant, Assistant Administrator, persons above the rank of Assistant Administrator, Personnel Clerk and one Secretary to the Medical Director, the Administrator, the Director of Nursing, persons regularly employed for

not more than 24 hours per week and students employed during the school vacation periods." (19 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6130-74-R: Canadian Union of Public Employees (Applicant) v. The Essex County Roman Catholic Separate School Board (Respondent).

Unit: "all office, clerical and technical employees of the respondent in the County of Essex, save and except supervisors, persons above the rank of supervisor, one secretary to the Secretary-Treasurer, one secretary to the Business Administrator and persons covered by a subsisting collective agreement between Canadian Union of Public Employees and its Local 1358 and the respondent." (8 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE UNIT DESCRIBED HEREIN IS LIMITED TO THE FOLLOWING OCCUPATIONAL CLASSIFICATIONS: PSYCHOMETRISTS, SPEECH THERAPISTS, RELIGIOUS ADVISORS AND SOCIAL WORKERS.).

6131-74-R: Oil & Gas Technicians, Service, Domestic and General Workers Union, Local 1267 (Applicant) v. Consumers Distributing Company (Respondent).

Unit: "all employees of the respondent working at or out of its warehouses in Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (225 employees in the unit).

6132-74-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. Alma Paint and Varnish Company Limited (Respondent).

Unit: "all control laboratory staff employed by the respondent at London, save and except foremen, persons above the rank of foreman, office and sales staff, retail store employees, chemists, research laboratory staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods, and all persons covered by a subsisting collective agreement between the Oil, Chemical and Atomic Workers International Union and its Local 9-834 and the respondent." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6139-74-R: Laborers' International Union of North America, Local Union No. 597 (Applicant) v. C. A. Smith Contracting Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6147-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Radovin Construction Company (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

6148-74-R: Canadian Union of Public Employees (Applicant) v. The Children's Aid Society of the County of Norfolk (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Haldimand-Norfolk, save and except supervisors, persons above the rank of supervisor, executive director, executive secretary to the agency, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (20 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT RELIEF PARENTS OF THE GROUP HOME ARE NOT INCLUDED IN THE BARGAINING UNIT.).

6161-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Central Hospital Corporation (Respondent).

Unit: "all technologists, technicians and laboratory assistants employed by the respondent in its medical laboratory, radiological and electrocardiographical departments in Metropolitan Toronto, save and except chief technologists, persons above the rank of chief technologist, practising members of the medical and nursing professions, students in training, office and clerical staff and students employed during the school vacation period." (25 employees in the unit). (THE BOARD NOTED THAT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK ARE INCLUDED IN THE BARGAINING UNIT. (SEE; THE H. GRAY LIMITED CASE 55 CLLC ¶18,011)).

6162-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Humber Memorial Hospital Association (Respondent).

Unit: "all Medical Laboratory, Radiology E.C.G., E.E.G. and Respiratory Technologists, Technicians and Assistants employed by Humber Memorial Hospital Association at Metropolitan Toronto save and except Charge Technologists, persons above the rank of Charge Technologist, students in training, students employed during the school vacation period, persons regularly employed for not more than twenty-four hours per week, office and clerical staff and employees covered by subsisting collective agreements." (39 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6163-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Scarborough General Hospital (Respondent).

Unit: "all Medical Laboratory, Radiology E.E.G., Pulmonary Function, Respiratory Function, Immunology technologists, Technicians and assistants employed by the respondent in Metropolitan Toronto, save and except Chief Technologists and persons above the rank of Chief Technologist, Students in training, Students employed during the School vacation period, office and clerical employees, and employees covered by subsisting labour agreements." (79 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6164-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Toronto East General and Orthopaedic Hospital Inc. (Respondent) v. Employee (Objector).

Unit: "all para-medical personnel employed by the respondent at Toronto, save and except charge technicians, assistant chief technicians, persons above the rank of charge technician and assistant chief technician, students in training, students employed after regular school hours or during the university or school vacation period, persons regularly employed for not more than 24 hours per week, office and clerical staff and persons covered by subsisting collective agreements with the Service Employees International Union, Local 204, the Canadian Union of Operating Engineers and by an application for certification by the Ontario Nurses' Association, Board File No. 5691-74-R." (97 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PARA-MEDICAL PERSONNEL INCLUDES: REGISTERED TECHNICIANS, NON-REGISTERED TECHNICIANS, TECHNICAL ASSISTANTS, LABORATORY ASSISTANTS EMPLOYED BY THE HOSPITAL IN THE HAEMATOLOGY, RADIOLOGY, MEDICAL LABORATORY, NUCLEAR MEDICINE, RESPIRATORY AND ELECTROCARDIOGRAPH DEPARTMENTS.).

6165-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. York-Finch General Hospital (Respondent).

Unit: "all medical laboratory technologists, laboratory assistants, radiology technologists, respiratory technologists, nuclear medicine technologists, electroencephalograph technologists and electrocardiogram technicians employed by the respondent in Metropolitan Toronto save and except Administrative Charge Technologists, persons above the rank of Administrative Charge Technologists, members of the medical and nursing profession, office, clerical, service and other technical staff, students in training and students employed during the school vacation period." (64 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6167-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. Dickie Construction Company Ltd. (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6168-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Nick D'Antonio Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

6169-74-R: Graphic Arts International Union, Local 12-L, Toronto (Applicant) v. Offset Film Systems Limited (Respondent).

Unit: "all lithographers, their apprentices and helpers in the employ of the respondent at Markham, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6173-74-R: The Norfolk Board of Education Office Employees' Association (Applicant) v. The Norfolk Board of Education (Respondent).

Unit: "all office and clerical employees of the respondent in the Regional Municipality of Haldimand-Norfolk in the former geographic County of Norfolk, save and except supervisors and persons above the rank of supervisor, secretary to the Business Administrator and secretary to the Director of Education." (59 employees in the unit).

6175-74-R: International Molders & Allied Workers Union (Applicant) v. Hobart Brothers of Canada Limited (Respondent).

Unit: "all employees of the respondent at Woodstock, save and except foremen and supervisors, persons above the rank of foreman and supervisor, sales persons, technicians, technologists, confidential secretary to the Vice-President, confidential secretary to the Manager of Finance and Administration, students employed during the school vacation period and those employees covered by a certificate of the Board to the

applicant dated February 15, 1974." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6177-74-R: Labourers' International Union of North America, Local Union 493 (Applicant) v. B G Checo Engineering Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6186-74-R: Bricklayers, Masons & Plasterers International Union of America Local #4, Ontario (Applicant) v. Lakeshore Acoustics Co. (Respondent).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6194-74-R: United Steelworkers of America (Applicant) v. Barber Hydraulic Turbine Ltd. (Respondent).

Unit: "all employees of the respondent in Port Colborne, save and except foremen and persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6195-74-R: Central Ontario District Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Greco Construction (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Simcoe, the District of Muskoka and the Townships of Rama, Mara and Thorah in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6207-74-R: Labourers International Union of North America, Local 607 (Applicant) v. Kap Cement Limited, Read-Mix Division (Respondent).

Unit: "all employees of the respondent's ready mix division at Kapuskasing, save and except foremen, persons above the rank of foreman, office and clerical staff." (5 employees in the unit).

6217-74-R: International Association of Machinists and Aerospace Workers (Applicant) v. The Goodyear Tire & Rubber Company of Canada, Limited (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie, save and except service manager, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (4 employees in the unit). (FOR PURPOSES OF CLARITY, THE BOARD NOTED MANAGEMENT PERSONNEL UNDERGOING A REGULAR PROGRAMME OF STORE TRAINING ARE EXCLUDED FROM THE BARGAINING UNIT.).

6220-74-R: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. H.J. Heinz Company of Canada Ltd. (Respondent).

Unit: "all employees in the factory of the Respondent at Leamington, save and except assistant department heads, foreladies, those above the rank of assistant department head and forelady, secretary to the Manager of the Quality Control Department, persons employed in the Medical Department and Personnel Department, senior labour analyst, persons employed regularly for twenty-four hours a week, or less, and students employed for the school vacation periods." (71 employees in the unit). (BY AGREEMENT OF THE PARTIES).

6222-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Con-Drain Company Ltd. (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (16 employees in the unit).

6233-74-R: United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. G.C. Rentals and Enterprises Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6234-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. Bonanza Drywall (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

6242-74-R: Labourers' International Union of North America, Local Union 1036 (Applicant) v. Knudsen's Painters & Decorators Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6245-74-R: Sheet Metal Workers' International Association Local Union 537 (Applicant) v. John Abrahams Roofing Limited (Respondent).

Unit: "all employees of the respondent engaged in roofing in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

6246-74-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Waltson Properties Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6247-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Tantalus Construction Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6248-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Raylena Construction Co. Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same,

save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6250-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. A & P Lathing & Drywall Co. (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

6254-74-R: Christian Labour Association of Canada (Applicant) v. Mallett Electric (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the employees). (HAVING REGARD TO THE FOREGOING).

6263-74-R: Christian Labour Association of Canada (Applicant) v. Hadovic Construction Limited (Respondent).

Unit: "all construction labourers, carpenters and carpenters' apprentices, plumbers and plumbers' apprentices and reinforcing rodmen in the employ of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all land north thereof in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6265-74-R: The Carpenters' District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Fransmet Holdings Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6270-74-R: Christian Labour Association of Canada (Applicant) v. J. B. Carroll Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Townships of Carling, Ferguson, McDougall, Foley, Cowper in the District of Parry Sound, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6271-74-R: Chatham Construction Workers Association Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Nu-Koat Painting Limited (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6272-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cape Installations Incorporated (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

5143-73-R: Graduate Assistants' Association (Applicant) v. Victoria University (Respondent).

Unit: "Those employees of Victoria University whose names appear in one of the four lists attached to this Notice, who serve as Teaching Fellows, with or without graduate school affiliated, or who serve as Instructors and are registered as part-time students in the University of Toronto School of Graduate Studies." (53 employees in the unit). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING A FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on voters' list		49
Number of persons who cast ballots	26	
Number of ballots marked in favour of applicant	22	
Number of ballots marked against applicant	4	

5955-74-R: Canadian Union of Operating Engineers (Applicant) v. Polygon Industries Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen and those above the rank of foreman, office and sales staff and students employed during the school vacation period." (63 employees in the unit).

Number of names of persons on revised voters' list		56
Number of persons who cast ballots	50	
Number of ballots marked in favour of applicant	34	
Number of ballots marked against applicant	16	

5958-74-R: Kraus Carpets Employees Association (Applicant) v. Strudex Fibres Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Waterloo, save and except foremen, assistant foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons not regularly employed for not more than 24 hours per week." (125 employees in the unit).

Number of names of persons on revised voters' list		118
Number of persons who cast ballots	90	
Number of spoiled ballots	3	
Number of ballots marked in favour of applicant	82	
Number of ballots marked against applicant	5	

6066-74-R: Marble Masons Tile Layers and Terrazzo Workers Union No. 31 (Applicant) v. A.V. Hallam Lathing and Plastering Ltd. (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #1) v. Local Union 1747, United Brotherhood of Carpenters and Joiners of America (Intervener #2) v. Operative Plasterers and Cement Masons International Association of The United States and Canada, Local Union no. 124, Ottawa (Intervener #3).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, and persons above the rank of non-working foreman." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		9
Number of persons who cast ballots	8	
Number of ballots marked in favour of applicant	7	
Number of ballots marked in favour of intervener	1	

Applications Certified Subsequent to Post-Hearing Vote

5630-74-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #128 (Applicant) v. D.F.D. Industries Limited (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, and office staff." (22 employees in the unit).

Number of names of persons on revised voters' list		11
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	3	

5635-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Haldimand (Respondent).

Unit: "all employees of the respondent, save and except non-working foremen, persons above the rank of non-working foreman, and office staff." (25 employees in the unit).

Number of names of persons on voters' list		26
Number of persons who cast ballots	26	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	9	

5681-74-R: Ontario Nurses' Association (Applicant) v. Toronto East General and Orthopaedic Hospital Inc. (Respondent) v. Service Employees Union, Local 204 (Intervener) v. Group of Employees (Objectors).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity and employed by the Toronto East General and Orthopaedic Hospital Inc., at Toronto, who are regularly employed for 24 hours per week or less, save and except assistant departmental supervisors, head nurses, and persons above the rank of assistant departmental supervisor and head nurse in charge of the I. V. Team." (70 employees in the unit).

Number of persons on revised voters' list		67
Number of persons who cast ballots	32	
Number of ballots marked in favour of applicant	32	
Number of ballots marked against applicant	0	

(BARGAINING UNIT #1 - BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5775-74-R: Canadian Construction, Building, Maintenance and General Workers' Union (N.C.C.L.) (Applicant) v. Aselford-Martin Ltd. (Respondent) v. Labourers' International Union of North America, Local 527 (Intervener).

Unit #2: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	4	
Number of ballots marked in favour of intervener	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5799-74-R: Service Employees' Union, Local 210 affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Charlotte Eleanor Englehart Hospital (Respondent).

Unit: "all employees of the respondent at Petrolia, save and except professional medical staff, graduate and registered nurses, technical personnel, office and clerical staff, supervisors and department heads, persons above the rank of supervisor or department head, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (62 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THAT THE EXCLUSION OF TECHNICAL PERSONNEL INCLUDES TECHNOLOGISTS, MEDICAL LABORATORY TECHNICIANS, GRADUATE PHARMACISTS AND GRADUATE DIETITIANS.). (FOR THE PURPOSES OF FURTHER CLARIFICATION, THE BOARD FURTHER NOTES THAT THE EXCLUSION OF TECHNICAL PERSONNEL INCLUDES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS, EVEN THOUGH THERE MAY BE NO EMPLOYEES IN THE EMPLOY OF THE RESPONDENT IN ALL OR SOME OF THESE CLASSIFICATIONS AT THE TIME OF THE MAKING OF THE APPLICATION. THIS FURTHER CLARIFICATION NOTE IS IN ACCORDANCE WITH A POLICY ADOPTED BY THE BOARD FOR THE PURPOSES OF DETERMINING APPROPRIATE BARGAINING UNITS IN HOSPITALS IN FEBRUARY 1964.). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD ALSO NOTES THAT THE EXCLUSION OF OFFICE AND CLERICAL STAFF INCLUDES THE EXCLUSION OF WARD CLERKS.).

Number of names of persons on revised voters' list		41
Number of persons who cast ballots	39	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	28	
Number of ballots marked against applicant	10	

5826-74-R: Service Employees Union, Local 210, affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Charlotte Eleanor Englehart Hospital (Respondent).

Unit: "all employees of the respondent at Petrolia regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except professional medical staff, graduate and registered nurses, technical personnel, office and clerical staff, supervisors and department heads, and persons above the rank of supervisor or department head." (19 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THAT THE EXCLUSION OF TECHNICAL PERSONNEL INCLUDES X-RAY TECHNOLOGISTS, X-RAY TECHNICIANS, MEDICAL LABORATORY TECHNOLOGISTS, MEDICAL LABORATORY TECHNICIANS, GRADUATE PHARMACISTS AND GRADUATE DIETITIANS.). (FOR THE PURPOSES OF FURTHER CLARIFICATION, THE BOARD FURTHER NOTES THAT THE EXCLUSION OF TECHNICAL PERSONNEL INCLUDES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS,

LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS, EVEN THOUGH THERE MAY BE NO EMPLOYEES IN THE EMPLOY OF THE RESPONDENT IN ALL OF SOME OF THESE CLASSIFICATIONS AT THE TIME OF THE MAKING OF THE APPLICATION. THIS FURTHER CLARIFICATION NOTE IS IN ACCORDANCE WITH A POLICY ADOPTED BY THE BOARD FOR THE PURPOSES OF DETERMINING APPROPRIATE BARGAINING UNITS IN HOSPITALS IN FEBRUARY 1964.). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD ALSO NOTES THAT THE EXCLUSION OF OFFICE AND CLERICAL STAFF INCLUDES THE EXCLUSION OF WARD CLERKS.).

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	2

5899-74-R: International Union, United Plant Guard Workers of America, Local 1971 (Applicant) v. The Ontario Paper Company Limited (Respondent).

Unit: "all security guards employed by the respondent to protect its property in the Town of Thorold, save and except supervisors or persons above the rank of supervisor." (18 employees in the unit).

Number of names of persons on voters list	10
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	2

5999-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Canada Building Materials Company (Respondent).

Unit #2: "all employees of the respondent who are regularly employed for not more than twenty-four hours per week and all students employed by the respondent during the school vacation period working at or out of Woodbridge, save and except foremen, persons above the rank of foreman, dispatchers, watchmen, technical staff, office and sales staff." (8 employees in the unit).

Number of names of persons on voters' list		9
Number of persons who cast ballots		9
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	1	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST 1974

No Vote Conducted

6041-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. E. J. Enterprises, General Delivery (Respondent). (2 employees).

6129-74-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. E.C. King Contracting Ltd. (Respondent) v. Group of Employees (Objectors). (88 employees).

6150-74-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. The Ontario Jockey Club (Respondent). (62 employees).

6183-74-R: Retail Clerks International Association (Applicant) v. Cash & Carry Lumber & Plywood Ltd. (Respondent). (7 employees).

6184-74-R: Labourers International Union of North America, Local Union 493 (Applicant) v. Anthony Derosé Limited (Respondent). (4 employees).

6201-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Elirpa Construction & Materials Limited (Respondent). (11 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

5585-74-R: Retail Clerks International Association (Applicant) v. Sayvette Family Department Store Ltd. (Respondent).

Voting Constituency: "All employees of the respondent at London save and except Store Manager and persons above the rank of Store Manager, Department Managers, Manager Trainees, Floor Supervisors and office

staff." (124 employees). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		85
Number of persons who cast ballots	85	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	18	
Number of ballots marked against applicant	65	

5667-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Sunnybrook Hospital (Respondent).

Voting Constituency: "All medical laboratory technologists, technicians, and Assistants employed by the Respondent in Metropolitan Toronto, save and except chief technologists, students, office and clerical employees, persons employed for not more than twenty-four hours per week, and employees covered by existing collective agreements." (122 employees). (THE BOARD FURTHER DIRECTED THAT ALL NON-SUPERVISORY PERSONS CLASSIFIED BY THE RESPONDENT AS "PARAMEDICAL PERSONNEL" BE PERMITTED TO VOTE AND THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.). (FOR PURPOSES OF CLARITY THE BOARD NOTES THAT "PARAMEDICAL PERSONNEL" INCLUDE: AUDIOMETRIC TECHNICIANS; AUDIO-VISUAL TECHNOLOGISTS; CARDIOVASCULAR TECHNOLOGISTS AND TECHNICIANS; CLINICAL INSTRUCTORS (RADIOLOGY); DARK ROOM TECHNICIANS, DENTAL ASSISTANTS, DIALYSIS TECHNICIANS; ECG TECHNICIANS; EEG TECHNICIANS; ELECTRONIC TECHNOLOGISTS; GRAPHIC ARTISTS; IMMUNOLOGY TECHNOLOGISTS; ISOTOPE TECHNOLOGISTS; MEDICAL LABORATORY TECHNOLOGISTS AND TECHNICAL ASSISTANTS; MEDICAL PHOTOGRAPHERS; PHARMACY TECHNICIANS AND ASSISTANTS; PSYCHOLOGICAL ASSISTANT; RESPIRATORY FUNCTION TECHNOLOGISTS; SOCIAL WORK ASSISTANTS' VESTIBULAR TECHNOLOGISTS AND TECHNICIANS; X-RAY TECHNOLOGISTS.). (THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST BY THE PERSONS ENCOMPASSED IN THE SAID VOTING CONSTITUENCY IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING A RULING OF THE BOARD WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT.).

Number of names of persons on voters' list		116
Number of persons who cast ballots	106	
Number of ballots excluding segregated ballots cast by persons whose names appear on voters' list	47	
Number of segregated ballots cast by persons whose names appear on voters' list	50	

Number of segregated ballots cast
by persons whose names do not
appear on voters' list

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BALLOT BOX SEALED

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5961-74-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant)
v. Armstrong Cork Industries Ltd. (Office Division) (Respondent).

Voting Constituency: "All office, clerical and technical employees of the respondent at its plant in Lindsay, Ontario, save and except supervisors, persons above the rank of supervisor, foremen, nurses, security guards, department heads, secretary to the Assistant General Production Manager and persons now covered by the subsisting collective agreement with the Textile Workers Union of America, AFL-CIO-CLC and its Local 1381." (20 employees).

Number of names of persons on revised voters' list		18
Number of persons who cast ballots	18	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	11	

6040-74-R: United Electrical, Radio & Machine Workers of America (UE)
(Applicant) v. Marr Electric Limited (Respondent).

Voting Constituency: "All employees of the respondent at Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (63 employees).

Number of names of persons on voters' list		55
Number of persons who cast ballots	54	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	24	
Number of ballots against applicant	29	

6061-74-R: International Woodworkers of America (Applicant) v. Oakwood Lumber & Millwork Company Limited (Respondent).

Voting Constituency: "All employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (27 employees).

Number of names of persons on revised voters' list		28
Number of persons who cast ballots	28	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	12	
Number of ballots marked against applicant	15	

Certification Dismissed Subsequent to Post-Hearing Vote

5368-73-R: Graphic Arts International Union, Local 12-L, Toronto (Applicant) v. Shorewood Packaging Corporation of Canada Limited (Respondent).

Unit: "all lithographers, their apprentices and helpers in the employ of the company located at Scarborough, save and except non-working foreman and persons above the rank of non-working foreman." (30 employees in the unit).

Number of names of persons on revised voters' list		29
Number of persons who cast ballots	27	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	18	

5529-74-R: Toronto Typographical Union No. 92 (Applicant) v. Systems Equipment Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto engaged in composing, offset, preparatory, pressroom bindery and finishing work, save and except non-working foremen, persons above the rank of non-working foreman, shippers, receivers, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (29 employees in the unit).

Number of names of persons on revised voters' list		27
Number of persons who cast ballots	27	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	14	

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5886-74-R: International Molders & Allied Workers Union (Applicant) v. Newport Heating & Marine Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Woodstock, Ontario, save and except foremen, persons above the rank of foreman, sales and office staff." (32 employees in the unit).

Number of names of persons on voters' list		31
Number of persons who cast ballots	30	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	28	

5909-74-R: Amalgamated Jewelry and Allied Trades Workers Union, Local 33 Toronto, I.J.W.U., A.F.L.-C.I.O., C.L.C. (Applicant) v. Century Novelty Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (55 employees in the unit).

Number of names of persons on revised voters' list		52
Number of persons who cast ballots	46	
Ballots segregated and not counted	1	
Number of spoiled ballots	4	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	35	

5914-74-R: Office and Professional Employees International Union (Applicant) v. The Hoover Company Limited (Respondent).

Unit: "all office, clerical and technical employees of the respondent, at 3221 and 4151 North Service Road in Burlington, save and except supervisors, persons above the rank of supervisor, plant nurse, payroll clerk over salaried individuals, benefits specialist, secretary to the Vice-President and General Manager, secretary to the Works Manager, secretary to the Industrial Relations Manager, secretary to the Field Sales Manager, secretary to the Merchandising Manager, secretary to the Chief Engineer and National Service Manager and Students employed on a co-operative basis." (68 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND FOR THE PURPOSE OF CLARIFICATION THE BOARD NOTED THAT THE PROJECT ENGINEER IS EXCLUDED FROM THE BARGAINING UNIT.).

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	57
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	39

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

5634-74-R: Retail Clerks International Association (Applicant) v. MacDonalds Consolidated Limited (Respondent). (7 employees).

6020-74-R: Brewery, Soft Drink, Distillery, Distributors & Miscellaneous Workers Local 1000 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Brewers' Warehousing Company Limited (Respondent) v. United Brewers' Warehousing Workers Provincial Board, representing Local and Branch Unions, and the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, C.L.C., hereinafter referred to as the union (Intervener). (190 employees).

6088-74-R: Service Employees Union Local 204, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Northwestern General Hospital (Respondent) v. Canadian Union of Operating Engineers, Local 101 (Intervener) v. The Civil Service Association of Ontario (Inc.) (Intervener). (63 employees).

6127-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Wynford Construction Limited (Respondent). (3 employees).

6198-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Erie Technological Products of Canada Limited (Respondent). (435 employees).

6236-74-R: Canadian Union of Public Employees (Applicant) v. Ingersoll Public Utilities Commission (Respondent). (3 employees).

6237-74-R: Canadian Union of Public Employees (Applicant) v. Ingersoll Public Utilities Commission (Respondent). (11 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING AUGUST

5949-74-R: Roy Griffin, Russell Townsend, Ken Richardson, Ken Downes and Gerald Nevin (Applicants) v. CUPE North End Plaza, 103 Lakeshore Road, Suite 206, St. Catharines (Respondent) v. West Lincoln Ambulance Ltd. (Employer). (5 employees). (DISMISSED).

6124-74-R: Paul F. Keating, George A. Fleming, Victor H. Kilgour, Gerald Condari, Roy W. Sullivan, and Raymond Stacey (Applicants) v. Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board representing Local and Branch Unions (Respondents) v. Brewers' Warehousing Company Limited (Intervener). (1300 employees). (WITHDRAWN).

6125-74-R: William Agoston, Joy Schultz, Ward MacDonald, Margaret Benjamin, Freda Smith and Josephine Tambleau (Applicants) v. Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board representing Local and Branch Unions (Respondents) v. Brewers' Warehousing Company Limited (Intervener). (26 employees). (WITHDRAWN).

6160-74-R: Arthur Showers (Applicant) v. Local Union 2345 International Brotherhood of Electrical Workers AFL CIO CLC (Respondent). (2 employees). (GRANTED).

6322-74-R: Welland County General Hospital (Applicant) v. Civil Services Association of Ontario (Respondent). (29 employees). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

AUGUST

6133-74-U: Dominion Glass Company Limited (Applicant) v. Those persons named in Schedule "A" attached hereto (Respondents). (WITHDRAWN).

6214-74-U: GTE Automatic Electric (Canada) Ltd. (Applicant) v. Timothy J. Kelly et al (See attached Schedule "A") (Respondents). (GRANTED).

6252-74-U: The Algoma Steel Corporation Limited (Applicant) v. Those persons named in Schedules "A", "B", "C" and "D" attached hereto (Respondents). (WITHDRAWN).

6292-74-U: Lennox Industries (Canada) Limited (Applicant) v. Victor Rochon et al, (See attached Schedules "A" and "B") (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

6052-74-U: The Ontario-Minnesota Pulp and Paper Company Limited (Applicant) v. William J. Adamson, et al (Respondents). (WITHDRAWN).

6053-74-U: The Ontario-Minnesota Pulp and Paper Company Limited (Applicant) v. E. Armstrong, et al (Respondents). (WITHDRAWN).

6056-74-U: The Ontario-Minnesota Pulp and Paper Company Limited (Applicant) v. D. McFee, et al (Respondents). (WITHDRAWN).

6134-74-U: Toronto Photoengravers Union, Local 35P - GAIU (Applicant) v. Peel Graphics Limited (Respondent). (WITHDRAWN).

6138-74-U: Dominion Glass Company Limited (Applicant) v. Those persons named in Schedule "A" attached hereto (Respondent). (WITHDRAWN).

6218-74-U: GTE Automatic Electric (Canada) Ltd. (Applicant) v. Timothy J. Kelly et al, (See attached Schedule "A") (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

AUGUST

3047-72-U: John M. Lussier (Complainant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Respondent).

- and -

3048-72-U: Edwin Steven Currie (Complainant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Respondent). (GRANTED).

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4692-73-U: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Complainant) v. Overhead Door Co. of Toronto Ltd. (Respondent). (WITHDRAWN).

5189-73-U: Karl Krafczek (Complainant) v. The United Steelworkers of America Local 3767, The Steel Company of Canada, Limited (Respondents). (DISMISSED).

5687-74-U: Joseph Dean (Complainant) v. Local Lodge 1246 I.A. of M. and A.W. (Respondent). (WITHDRAWN).

5735-74-U: James Clinton Handsor (Complainant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 89 (Respondent). (DISMISSED).

5807-74-U: Joseph Dean (Complainant) v. Local Lodge 1246 International Association of Machinists & Aerospace Workers, and Franklin Manufacturing Company of Canada Ltd. (Respondent). (WITHDRAWN).

5862-74-U: Walter C. Sarich (Complainant) v. Corporation of the City of Sault Ste. Marie, Ontario (Respondent). (DISMISSED).

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6014-74-U: Labourers' International Union of North America, Local 607 (Complainant) v. Taro Properties (Respondent). (WITHDRAWN).

6055-74-U: Labourers' International Union of North America, Local 607 (Complainant) v. R. J. Breton, General Contractor (Respondent). (WITHDRAWN).

6095-74-U: United Brotherhood of Carpenters and Joiners of America, Local Union 446, 321 John Street, Sault Ste. Marie, Ontario (Complainant) v. Algoma Home Service (Community of Elliot Lake, Ontario, within the District of Algoma) (Respondent). (DISMISSED).

6199-74-U: James Cook Salvona (Complainant) v. Dashwood Industries Ltd. Centralia, Ontario (Respondent). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

6026-74-M: London and District Building Service Workers' Union, Local 220 (Trade Union) v. The Hospital Commission, Sarnia General Hospital (Employer). (GRANTED).

6062-74-M: Service Employees Union, Local 268 (Trade Union) v. Plummer Memorial Public Hospital, Sault Ste. Marie - (Office & Clerical) (Employer). (GRANTED).

6063-74-M: Service Employees Union, Local 268 (Trade Union) v. Plummer Memorial Public Hospital, Sault Ste. Marie - (Laboratory & Radiology) (Employer). (GRANTED).

6078-74-M: Service Employees Union, Local 268 (Trade Union) v. Plummer Memorial Public Hospital Sault Ste. Marie (Employer). (GRANTED).

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then brought this application alleging a violation of section 71(2) of the Act. During the course of the hearing in this matter there was considerable evidence adduced as to the merits of the complainant's dispute with the trade union and its officials. However, we do not think that the merits of that dispute are relevant to the issue before us, but rather we think that this case raises certain policy considerations for determination.

10. The legislature under section 71(2) of the Act has attempted to remove any impediments to parties utilizing this Board for the purposes contained within The Labour Relations Act. It is the intent that there be complete freedom for persons who wish to avail themselves of the benefits and remedies contained in The Labour Relations Act.

11. On the other hand the courts in certain cases have required parties to exhaust their remedies and unless there is a departure from natural justice certain courts have been loathe to interfere with the self-regulation of voluntary associations.

12. There is therefore a conflict in this matter as to whether the Board should enforce a policy which would allow persons complete and free access to this Board, or whether the Board like a court should recognize the right of a trade union to conduct its own internal affairs before resort is had to this Board.

13. On balance we think that we should enforce the legislative policy of granting access to this Board in order to remedy matters of industrial relations. It may well have been that on the original application that the respondent trade union could have successfully submitted that the Board defer a decision on the matter or adjourn the matter until the parties had exhausted their remedies before the trade union's internal tribunals. But that is something quite apart from penalizing a person merely because he has filed an application with this Board. If employees are made to fear some form of retaliation for exercising their rights under this Act, either by the trade unions or by the employers, then the purposes of the Act will not be accomplished. Accordingly, it is our determination that the trade union has violated section 71(2)(b) of The Labour Relations Act by imposing a "pecuniary or other penalty" on the complainants because they "filed a complaint under this Act". Accordingly, and despite the plea of guilty by the complainants to the trade union tribunal, we determine that the trade union shall forthwith reimburse the complainants for the fines levied pursuant to the charges and findings made against them, and that any record of their being penalized for that offence be expunged from the records of the trade union, and that the trade union cease and desist any further efforts in attempting to penalize the complainants for taking or for pursuing remedies available under this Act.

59-74-PH: THE NORFOLK HOSPITAL ASSOCIATION (Applicant) v. London and District Building Service Workers' Union, Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: D. L. Brisbin and D. A. Page for the applicant, and T. Wohl and J. Askin for the respondent.

DECISION OF THE BOARD: September 3, 1974.

1. This is an application to the Board for consent to institute a prosecution of the respondent trade union for alleged violation of section 8(2) of The Hospital Labour Disputes Arbitration Act and section 65 of The Labour Relations Act.

2. On the evidence, it cannot seriously be contended that the applicant has failed to make out a prima facie case, or that there are no issues of fact and law which might properly be heard in Provincial Court. However, counsel for the respondent argued that the Board ought to exercise its discretion under section 90(1) of the Labour Relations Act and, in the peculiar circumstances of this case, refuse its consent. Having carefully considered counsel's submissions, we are of the unanimous view that this is not a case for withholding consent. It cannot be said that the alleged violations are merely technical, nor that the matters raised are trivial, frivolous or vexatious: cf. Steel Company of Canada Ltd., 47 CLLC ¶16,487; Savage Shoes Ltd., 53 CLLC ¶17,060. In Toronto Western Hospital, [1972] OLRB Rep. 851, an application by the union for consent to prosecute the employer was refused, in part, because "...the action complained of was provoked by and arose directly out of the attempt by the union to use an illegal strike as a bargaining tool...". The applicant in the instant case was guilty of no illegal conduct. We see no reason, therefore, why our discretion should be exercised in the respondent's favour.

3. The Board accordingly consents to the institution of a prosecution against the respondent trade union for the following offence alleged to have been committed:

that the respondent has called or authorized an unlawful strike in violation of section 8(2) of the Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, c. 152, and the Ontario Labour Relations Act, R.S.O. 1970, section 65.

4. The appropriate documents will issue.

5736-74-U: International Woodworkers of America (Complainant) v. BOYLE-MIDWAY (CANADA) LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J.E.C. Robinson, Q.C. and D. B. Archer.

APPEARANCES AT THE HEARING: B. Dunn and J. C. Horan for the complainant; W. J. McNaughton and D. M. Sanderson for the respondent.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER J.E.C. ROBINSON, Q.C.:
September 3, 1974.

1. This is a complaint filed under section 79 of the Act wherein it was alleged that Margaret Kovacs, Jean Nicholson, Mary Cormier, Ann Ciconi and Kay Sidorek were discharged by the respondent company contrary to section 58(a) of the Act.

2. The Board notes the agreement of the parties with respect to the employment status of Margaret Kovacs and terminates the proceedings as it may affect her but without prejudice to the complainant to refile its complaint should that become necessary.

3. On April 1, 1974, a meeting was held at the home of Jean Nicholson and in attendance was Mary Cormier and Margaret Kovacs. At this meeting the desirability of union representation was discussed with respect to the respondent's employees. It was resolved that this matter should be pursued further and two other meetings were scheduled for April 8th, and 9th, at the homes of Mrs. Cormier and Kovacs. The grievors named herein participated in one or both of these meetings. Finally with the help of Mr. D. Chaissant, business representative for the International Woodworkers of America, an organizational meeting was scheduled on April 15, 1974 at the Columbus Hall on Royal York Road, Toronto. The thirteen employees that attended this meeting applied for and gained membership in the complainant trade union. On consent of the Board and by the agreement of counsel the Board permitted the complainant to file in evidence thirteen membership cards, all of which were dated on April 15, 1974. Of the thirteen cards filed, the grievors named herein appeared as members and Mr. Chaissant appears as signatory to the receipt portion of the documents. No further evidence was adduced by the complainant with respect to the grievor's organizational activities.

4. It appears that the respondent company at the end of December 1973, was in the process of reviewing its productivity figures. As a result of this review it was estimated that there was a 30% drop in productivity in the last fiscal year covering the period between January 1973 and January 1974. The reason for this unhappy situation was attributed to the low productivity of employees as a result of undisciplined control by supervisory staff as well as a tolerant posture

towards excessive absenteeism. Some evidence was adduced through Mr. Charleton, Vice-President of the respondent's production department, with respect to the impact of absenteeism on the production process. In addition, it was discerned that the principal reasons for the absenteeism was attributable to the number of accidents occurring on the job. It was stated by Mr. Charleton that assessments by the Workmen's Compensation Board had exceeded contributions by approximately \$8,000.00 and therefore was causing the company substantial losses in that regard as well. Indeed, on March 14, 1974 a memorandum was dispatched to Mr. Charleton from the respondent's finance department outlining these increased expenditures and recommending a study with respect to introducing new safety measures. It was also suggested that any employee that failed to co-operate with the effort to increase productivity generally and reduce absenteeism particularly was to be terminated.

5. Mr. Charleton initially discerned that a change in supervisory personnel was necessary. Mr. Waterfield was removed from the job of plant superintendent and the duties and responsibilities attached to this position were to be transferred to and consolidated with the position of production manager. On April 18, 1974, Mr. Walls, as a result, was given the overall responsibility of establishing a disciplined operation of the respondent's production lines.

6. Prior to the assumption by Mr. Walls of his new functions, Mr. Charleton on his own initiative had instructed the personnel department to initiate a review of employees' work records. Mrs. Nicholson was interviewed as a result thereof on April 16, 1974. She was asked to sign a document indicating that a conversation with respect to her past record took place. This record, as was admitted by Mrs. Nicholson, included several accidents causing her to lose time as well as gain compensation due to accidents on the job. Upon her refusal to sign the document, her services were terminated.

7. Indeed, after Mr. Wall's assumed his new job function these interviews continued in the manner aforesaid. As a result approximately ten employees, including the four aggrieved, had their services terminated for various and sundry reasons allegedly relating to their past work performance. Of the ten persons discharged six had joined the complainant trade union on April 15, 1974.

8. In complaints filed under S79 the Board has often stated that where discharges coincide with the grievor's union activity a suspicion may arise that the discharge was for reasons contrary to the provisions of the Labour Relations Act. In such instances, the Board usually requires the respondent employer to provide a reasonable explanation for the discharge. The Board has imposed this requirement because the real reason for a discharge is often a matter peculiar to the

knowledge of the employer. Nevertheless in assessing the evidence adduced before us the Board does not address itself to the reasonableness or the justness of the discharge but will restrict its review to whether trade union activity played a part in the employer's decision.

9. Although the Board may conclude, as a result of the uncontradicted evidence of a conversation held between Mrs. Cormier and Mr. Dali, a member of the respondent's supervisory staff, that the respondent at all material times knew of the complainant's attempts to organize its employees, we cannot thereby find in light of the explanation given by the respondent that the discharges were effected for union activity. Firstly, we have no reason to disbelieve the testimony relating to the reduction in the respondent's productivity for the fiscal year of 1973. And incidentally, we can find no reason to doubt that measures were needed to curb the undisciplined operation of the respondent's production lines. To this end, plans for redressing the situation were initiated in March, 1974 a few weeks prior to the first organizational meeting held on April 1, 1974. Furthermore the reforms once instituted were comprehensive in nature. They not only entailed personnel changes amongst production employees but supervisory staff as well. And, of course, in effecting these changes the services of employees who did not support the complainant trade union as well as those who did were terminated.

10. As a result of this conclusion, the Board is of the opinion that the complainant has failed to make out a case in support of its allegations and therefore the complaint is dismissed.

DECISION OF BOARD MEMBER D. B. ARCHER: September 3, 1974.

The facts are basically as stated in the majority decision. I recognize that in Ontario, unlike other provinces, the onus is on the union to prove the discharge is because of union activity. This is a very serious onus that is almost impossible for the union to fulfill unless the company is extremely careless in its handling of the discharge.

I suggest the onus changes when the union proves that union activity entered into the reasons for discharge or where the totality of coincidence is so great it calls for explanation on the company's part.

This is the situation I suggest exists in the present case.

The first four girls who admittedly formed the union are all fired for different reasons. Jean Nicholson who attended the original organizing meeting is fired for refusing to sign a paper that could be regarded as a written warning.

On the other hand, Mary Cormier is whose house the original union meeting was held is fired even though she signs the paper. A Mrs. Murphy who is not among the originals, whose absentee record is about the same as the others is kept on according to company President because of her long service. But Kay Sidorak whose service is as long as Mrs. Murphy and who attended original meetings is fired after being shown her absentee record. However, she is fired ostensibly for swearing at a fellow employee. Then a Mrs. Reid who is not by evidence connected to the union has an absentee record equal to the others, has no lengthy seniority is kept on because she is repentant. Anne Cicioni the fourth union original is fired for 15 days previous absenteeism about which she has never received a reprimand nor has she had any complaints about her work.

Mary Cormier on the witness stated that Ed Dali, a lead hand or supervisor told her, "Jim Walls (Plant Supervisor) has the names of employees who formed the union. You were to be fired the same day as Jean Nicholson, but you were called home because of your child's sickness". Despite the fact that both Dali and Wall were present at the hearing neither was called by the company to refute these and other statements.

It is interesting to note that all girls were apparently satis-

factory employees who received regular wage increases. In the case of Kay Sidorak she had previously terminated and was rehired. None of them received a reprimand about the quality of their work.

William Carleton, Vice-President in charge of production, gave evidence on the main issues which was mostly hearsay and was of very little value.

In view of the mounting coincidence, the timing of the discharges, the Dali statement and the fact that the girls discharged were the organizers of the union, I think the union has built a case that should have been answered by the company. I feel the onus had shifted to the company to offer a rebuttal. Despite the fact that Young, Personnel Manager, Walls, Monk and Dali were present none were called to the stand.

In view of the circumstantial evidence that was produced by the union, the only evidence a union can produce in discharge cases, unless by some fortuitious circumstance it is made privy to company decision making, I would have found that the complainants were discharged contrary to the Act and would have ordered them re-instated in their employment.

5977-74-U: George Freris (Complainant) v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) AND DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (Respondents).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES AT THE HEARING: M. R. Gray for the complainant; H. F. Caley, F. Fairchild and M. Cornish for the respondent union; D. F. Hersey and P. Birch for the respondent company.

DECISION OF THE BOARD: September 3, 1974.

1. This is a complaint filed under section 79 wherein it is alleged that "...during the period from March 18, 1970 until June 14, 1971, the grievor was dealt with by representatives of the respondent trade union contrary to the provisions of section 60 of The Labour Relations Act."

2. It appears that the grievor was hired by the respondent company on September 9, 1969. On October 4, 1969 his seniority date with respect to his service with the company commenced and continued until March 18, 1970 when he was discharged "for allegedly concealing faulty workmanship". On April 24, 1970, after a discharge grievance was filed on the grievor's behalf, a settlement was negotiated between the respondent company and the respondent trade union. Although the particulars of the terms of settlement were not elaborated to the Board during the course of the representations of the parties, it appears that in satisfaction of the grievance, the respondent company undertook to relocate or rehire the grievor at a later date. It appears from the complaint that implementation of the settlement did not proceed with the dispatch anticipated by the grievor. As a result thereof, the complaint also indicates that from May, 1970 to October 1973 numerous attempts were made by the grievor to contact various representatives of the respondent trade union with respect to a satisfactory implementation of the settlement. In this regard, it was also indicated that on June 14, 1971 the respondent company indeed rehired or relocated the grievor to the position of "progress chaser." Upon resuming his employment with the company the grievor appears to have discovered that his "relocation" with the company was without accrued seniority benefits covering the period between September 1969 and June 14, 1971. As a result thereof further contact was made with representatives of the respondent trade union with respect to these benefits. It was conceded by counsel for the complainant that no grievance was requested nor was filed with respect to these benefits. Between October 1973 until the filing of the instant complaint on July 3, 1974 no further contact with the respondent trade union is indicated in the allegations.

3. Counsel for both the respondent trade union and the respondent company raised a number of preliminary objections relating to the jurisdiction and the propriety of this Board to proceed with the merits of the grievor's complaint. For the reasons outlined below, the Board need only deal with one of them.

4. The argument is made that "the facts and circumstances giving rise to the instant complaint" occurred at all material times prior to the enactment of section 60 of the Act on February 15, 1971. (see; The Labour Relations Amendment Act S.O. 1970, c. 85, S23). Since the thrust of the grievor's complaint is the alleged failure by the respondent trade union to implement the settlement negotiated with the respondent company on April 24, 1970 (and even assuming such alleged failure to implement was done in bad faith) there could be no violation of a

substantive provision of the Labour Relations Act, having regard to the prospective operation of statutes. Or, in other words there was no duty of fair representation imposed by any section of The Labour Relations Act on the respondent trade union on or about April 24, 1970, when the offence is alleged to have taken place.

5. In reply counsel for the complainant submits that although the alleged offence occurred prior to the enactment of section 60, nevertheless, there was "a continuing obligation" on the respondent trade union to forward the complainant's grievance and to implement the terms of the settlement in good faith and in accordance with its duty of fair representation. The continuing failure of the respondent to do so became an offence under the Act when on February 15, 1971 the duty of fair representation was enacted and at all material times thereafter.

6. The Board in several of its cases has applied the Statutory rule of interpretation relating to the non-retrospective application of statutes. More particularly in The Yvan Robichaud Case OLRB M.R. June 1971 305 the complainant alleged violation of the respondent's duty of fair representation where subsequent to his filing of a grievance in December 1970, the trade union advised in January 1971 that there was nothing it could do for him. The Board in dismissing the complaint stated;

"3. Assuming, but without in any way deciding, that the conduct of the union complained of was contrary to section 51a, (now section 60) any rights which the grievor has under section 51a, came into being prior to February 15, 1971, the date on which section 51a, as enacted by S.O. 1970 c. 85, came into force. Prior to that date, the Labour Relations Act did not impose a duty of fair representation on a trade union. There seems little doubt section 51a creates a substantive right for employees correlative to the duty of fair representation imposed on the trade union. In our view, section 51a, must be characterized as a substantive enactment and not merely a procedural one.

4. Statutes are normally construed to have prospective operation only. The law in this regard is well stated in Maxwell On Interpretation of Statutes (12th ed) at p. 215;

It is a fundamental rule of english law that no statute should be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

One of the notable exceptions to the rule against retrospective construction relates to procedural Acts which are usually construed to operate retrospectively. See Upper Canada College v. Smith, (1921) 61 SCR 413, (1921) 1 W.W.R. 1154, 57 D.L.R. 648; Re Gage (1961) 28 D.L.R. (2d) 469 at 474; and International Union of Operating Engineers Local 115 v. Kaiser Resources Ltd., 71 CLLC ¶14,079.

5. As noted above, it is our view that section 51a is not a procedural enactment. Furthermore, there is nothing in the section itself, either in its own terms or when viewed in the over-all scheme of The Labour Relations Act, which suggests that it should be given a retrospective operation.

6. In these circumstances, there was no duty of fair representation imposed by the section on the respondent in this case in December, 1970, or January, 1971. Thus, it cannot be said, as alleged by the grievor in his complaint that he has been dealt with by the respondent contrary to section 51a."

7. Similarly in The Rutherford Dairies Limited Case OLRB M.R. March 1972, 240, the respondent trade union took the position, that apart from any other consideration, a complaint under section 60 was out of time since the section of the Act did not come into effect until February 15, 1971. The Board indicated that although the trade union was under no obligation to process a grievance filed on February 1, 1971, it in any event did so in accordance with its duty of fair representation. More particularly, the Board stated at p. 244; "... when the grievance was first referred to the union on February 1st, the union could have refused to process the grievance at that time without any fear of violating the provisions of section 60 since it had not as yet been proclaimed."

8. We are of the opinion that based on the allegations filed in the complaint, the material facts upon which counsel hopes to establish

a case occurred at a time when the Labour Relations Act imposed no duty of fair representation on the respondent trade union (see for example; The Essex International of Canada Limited Case, OLRB M.R. January 1972, 104 at page 106). We are further of the opinion that when section 60 was introduced in February 15, 1971, there was "no continuing obligation" imposed on the respondent. That is to say, we find it difficult to conceive of "a continuing obligation" having regard to the fact that we are bound by law to find no obligation existed ab initio. We therefore are compelled to terminate these proceedings forthwith.

9. It should be stressed however that this decision is without prejudice to any remedy available to the grievor in another forum. We do not propose to assess the efficacy of recourse to other avenues of redress save as to recommend the prudence of taking the appropriate steps of processing a grievance under the relevant terms of the collective agreement prior to filing a complaint with the Board alleging violation of section 60 of the Act.

60-74-PH: THE NORFOLK HOSPITAL ASSOCIATION (Applicant) v. London and District Building Service Workers' Union, Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members O. Hodges and J. D. Bell.

APPEARANCES AT THE HEARING: D. L. Brisbin and D. A. Page for the applicant, and T Wohl and J. Askin for the respondent.

DECISION OF THE BOARD: September 3, 1974.

1. This is an application by the Norfolk Hospital Association for a declaration that a strike called or authorized by the respondent, London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., is unlawful. The Board's jurisdiction to entertain the application (secs. 2 and 8(2) of the Hospital Labour Disputes Arbitration Act, R.S.O. 1970 c. 208 as amended, and section 65 and 82 of The Labour Relations Act, R.S.O. 1970 c. 232) is not challenged. In addition, it was agreed that the Norfolk General Hospital (hereinafter referred to as "the hospital" is a hospital within the meaning of section 1(1)(aa) of the said Hospital Labour Disputes Arbitration Act.

2. The parties are in essential agreement as to the facts. At all material times, the applicant and the respondent were parties to two collective agreements: one covering service employees of the hospital, and the other covering its office and clerical employees. Both agreements were current when the events giving rise to this application occurred, the service agreement running from May 1, 1973

to December 31, 1974, and the office and clerical agreement from November 1, 1973 to December 31, 1974.

3. By letter dated March 26th, 1974 Mr. John Askin, President and Business Manager of the respondent, requested the applicant to re-open the service agreement "...for the purpose of negotiating a wage increase retroactive to January 1, 1974". Although Mr. Askin conceded in his letter that the collective agreement did not expire until December 31, 1974, he justified the request for re-negotiation on the basis of financial hardship for the respondent's members, caused by dramatic increases in the cost of living.

4. By letter dated April 2, 1974, the Assistant Administrator of the hospital, H.J. Fair, rejected the applicant's request to re-open the agreement. In the same letter, Mr. Fair chastised the applicant for what he referred to as a "...political propaganda campaign to bring pressure on the hospital through the broadcast and newspaper media".

5. On April 25, 1974, following a membership meeting of the respondent, at which a strike vote was conducted, Mr. Askin, on behalf of the respondent, wrote to Miss Bowden, the Hospital Administrator, as follows:

"This will serve to advise you that the members of this Union, London and District Building Service Workers' Union, Local 220, S.E.I.U., working at the Norfolk General Hospital at Simcoe, Ontario, and recognized in the Collective Agreement between the parties, have voted in favour of strike action in support of decent wages, higher benefits and better working conditions.

The strike of the bargaining unit employees will commence at any time after May 1, 1974.

This is official notification."

6. On May 1, 1974, Mr. Fair replied to Mr. Askin as follows:

"Please be informed that Norfolk General Hospital will meet with the Union to bargain towards the Toronto settlement position. Please confirm that the strike is cancelled and suggest meeting dates (no earlier than 2 weeks hence)".

7. Mr. Askin testified that he subsequently advised Miss Bowden, on May 2nd "that the deadline (for the strike) was being lifted". At about the same time, the respondent issued a news release which stated in part:

"As a result of the strong united stand and overwhelming votes in favour of strike action taken by members of Local 220, the demands of the hospital workers are now being met. ...Because of these developments we believe that the strike threat against local hospitals can be lifted and the public need not be inconvenienced. The prospect of any strike in Southwestern Ontario now rests in the hands of the hospital administrations."

8. Between May 3rd and June 27th, Mr. Askin and Mr. Fair had numerous conversations concerning the re-opening of negotiations, and Mr. Askin testified that, during that period, he supplied Mr. Fair with several settlement memoranda concluded by his union with other hospitals in southwestern Ontario. Finally, on June 27th, the applicant and the respondent entered into a Memorandum of Agreement delaying the implementation of a 6% wage increase due under both agreements on July 1, 1974. It is apparent that this deferral was consented to on the assumption that all wage rates were soon to be renegotiated. Mr. Askin testified that Mr. Fair indicated that he expected these renegotiations to commence within seven to ten days of June 27th.

9. According to Askin, the June 27th memorandum caused an alarming escalation in employee dissatisfaction - already intense due to the long delay in commencement of the promised renegotiations. He communicated this membership dissatisfaction to Miss Bowden who, in turn, circulated a memorandum to employees on July 15th, acknowledging their impatience, reassuring them of the hospital's good faith and of its desire "to support your positions in the fair and reasonable settlement".

10. On or about July 10th, Fair told Askin that the hospital was prepared to meet with the union on August 2nd to present an offer. Fair said that he thought the union would be "happy" with what the hospital would be proposing. Askin replied that "he could not make the decision himself" and that he would call a special membership meeting for July 16th. He did so, and the members, according to Askin, were extremely hostile. They thought the memorandum of June 27th had lost them the 6% wage increase to which they had previously been entitled, and in Askin's words, there was "no way they were prepared to wait until August 2nd for a meeting". At the same meeting they voted in favour of strike action at midnight, July 22nd, the same day that the registered nurses were, reportedly, to withdraw their services.

11. Events then moved rapidly. The members in attendance at the July 16th meeting left the meeting and marched to the hospital. When they arrived, they were unable to see the Administrator immediately.

Accordingly, Askin caused a handwritten note to be delivered to the Administrator which read:

"Since you are not prepared to meet the Union Committee members this evening to discuss this most important matter of wages and benefits, we are hereby informing you that on Monday, July 22nd, 1974, at 12:00 midnight the employees of the Norfolk General Hospital who are members of London and District Building Service Workers' Union, Local 220 S.E.I.U. will strike.

This action is the unanimous decision of the members at a special membership meeting held on Tuesday, July 16th, 1974."

12. Later the same day, the Administrator met with Askin and the Committee and told them that the meeting of August 2nd, to present detailed classification increases, was still on. Faced with confirmation of the August 2nd meeting, Askin conferred again with a group of the membership, and it was decided to reiterate the announcement of strike action, with the deadline advanced to 7:00 a.m., July 22nd. This further decision was contained in a letter dated July 19th, 1974, to the Administrator from Askin as follows:

"This will serve to advise you that the members of London and District Building Service Workers' Union, Local 220, S.E.I.U., working for the Norfolk Hospital Association at the Norfolk General Hospital, will strike the hospital commencing at 7:00 a.m. Monday, July 22nd, 1974."

13. The Administrator testified that when Askin handed her the note of July 19th, he stated that the only way the strike could be stopped was "if an offer was placed on the table". She replied that the proposed strike action was illegal and asked that the members be ordered back to work. Later the same day, following consultation with other officials of the applicant, the administrator notified Askin that the hospital had an offer to put on the table and that they were prepared to meet on July 23rd. This proposal was confirmed by letter dated July 20th.

14. Askin arranged a further meeting of stewards and committee members of the respondent on Sunday, July 21st. Those in attendance rejected the suggestion of a meeting on July 23rd. Askin informed Miss Bowden, who, following further consultation, agreed to meet on July 22nd, if the respondent would defer the strike deadline. The same day Askin wrote to the Administrator as follows:

"This will serve to advise you that the strike deadline of 7:00 a.m., Monday, July 22nd, 1974, is hereby suspended until 12:00 noon, Monday, July 22nd, 1974, based on the understanding that the hospital representatives will meet with the union committee members of the office and clerical bargaining unit and the main bargaining unit at 10:00 a.m. on Monday, July 22nd, 1974, to review the hospital proposal."

15. The parties met on the morning of July 22nd. Two offers were made by the hospital and both were rejected by the union. The strike commenced at 12:30 p.m., July 22nd. A further meeting was held, with a conciliation officer in attendance, on July 24th, when a new proposal was advanced by Mr. D. A. Page, then acting on behalf of the hospital. That proposal was also rejected by the union. The following day Mr. Askin and Mr. Wohl, the respondent's solicitor, arranged a meeting with the Administrator (who had not been present at the meeting on the preceding day) to obtain clarification of the July 24th offer. Two days later, the respondent's strike committee issued a strike bulletin to the members. That bulletin, which was approved by Askin, confirmed that a strike had been in progress for five days and that "the members are out on a picket line in full force". Finally, on August 1st, following further discussions, the strike ended. On August 6th, the final memorandum of settlement was concluded, extending both agreements for one year to December 31st, 1975. On the same day, the parties made a joint application to the Ontario Labour Relations Board for early termination of both collective agreements, to permit the revisions set out in the memorandum of August 6th to take effect.

16. We have set out the chronology of events covering the relevant period in some detail in order that the defences to the application can be fully appreciated. Mr. Wohl, for the respondent, admitted that a strike of some ten days' duration had occurred and that the strike was unlawful under section 8(1) of the Hospital Labour Disputes Arbitration Act. However, if we understood his position correctly, he did not concede the respondent had violated section 8(2) of that Act (which incorporates, inter alia, section 65 of the Labour Relations Act) in that the evidence did not establish that the respondent trade union had called, authorized or threatened to call or authorize an unlawful strike.

17. Before dealing with that contention, we wish to refer to an objection made by counsel for the respondent to the reception of certain evidence tendered by the applicant. Specific objection was made to the introduction of Mr. Askin's letter to the Administrator dated July 19th, reiterating the intention of the members to strike on July 22nd. Mr. Wohl argued that this document had not been referred to in the statement of material facts accompanying the application. A further objection - this time on the basis of relevancy - was made to the introduction by

Mr. Brisbin, during cross-examination of Mr. Askin, of a circular issued by the union concerning a strike at the Woodstock hospital. The Board reserved on both objections. We now wish to record our finding that - while the result which we have arrived at would have been the same without considering either document - both documents are relevant and admissible. The requirement of Rule 47 of the Board's Rules of Procedure that all material facts be included in an application does not, as the Rule states, oblige an applicant to detail each piece of evidence upon which it intends to rely in support of its allegations. In any event, even if the documents had contained material facts which should have been disclosed in advance, we do not believe that the Board should adopt a more rigid and technical approach than the courts, where, in similar circumstances, pleadings could be amended, so long as a new cause of action is not raised. Moreover, the documents to which objection was taken were prepared by the union itself, so that there could be no element of surprise. If there had been, we would have entertained a motion for adjournment, but none was made.

18. For the same reasons, we reject Mr. Wohl's broader submission - made (and rejected) by way of a preliminary motion and repeated in final argument - that the applicant should be strictly limited to the events and documents referred to in the statement of material facts appended to the application. Apart from any other consideration, the respondent's witness, Mr. Askin, testified in chief to a variety of matters other than those referred to in the applicant's material facts, including the letter of July 19th, to which Mr. Wohl made specific objection. Any basis for the objection was, accordingly, waived when Mr. Askin testified.

19. We find, on all of the evidence and having carefully considered the submissions of the parties, that the union, i.e., the membership, the stewards, the strike committee and the president and business manager, at various times, called and authorized and threatened to call and authorize an unlawful strike, contrary to the Hospital Labour Disputes Arbitration Act, as alleged. In so finding, we rely particularly, but not exclusively, on Mr. Askin's letter of March 26th, the strike vote conducted at the respondent's membership meeting on April 25th, Mr. Askin's letter of April 25th, the union's subsequent press release, and Mr. Askin's correspondence and conversations with the Administrator in the period July 16th through July 21st. As to the responsibility of officers and officials of the trade union for the conduct alleged, we refer, specifically, to section 88(2) of the Labour Relations Act.

20. Counsel for the respondent contended that should the evidence satisfy the Board that the offence alleged was committed, this was a proper case for the exercise of the Board's discretion in favour of his client. He pointed out that the strike had ended on August 1st, some 23 days prior to the hearing; that there had been no recurrence,

and that there was no reasonable apprehension of any recurrence. He referred to the fact that since the end of the strike, the parties had concluded a collective agreement covering part-time employees, without a strike or the threat of a strike. He argued that the relationship between the parties had been entirely satisfactory prior to the recent events; that the strike was an isolated event caused, in the main, by unusual and unforeseen economic pressures on the employees; and that no useful purpose could be served in granting the declaration.

21. As an additional ground, counsel argued that the Board should exercise its discretion and refuse the declaration for the reason that the respondent had, by its conduct prior to July 22nd, 1974, provoked the union and the employees to engage in illegal activity. He referred in particular to the applicant's initial peremptory rejection of the union's request to reopen the collective agreement; to the delay in arranging for a meeting, once the decision to negotiate had been reached; to the applicant's insensitivity to the legitimate anxiety of its employees, and in particular to its dilatory bargaining tactics and its reluctance to match the pattern of hospital settlements elsewhere in southwestern Ontario.

22. We have no hesitation in rejecting the respondent's contention that the applicant was guilty of provocation. As a matter of law, the applicant was under no duty to bargain at all, so that even if it had adamantly refused to meet and discuss revisions to the collective agreements, we could not conclude that it was guilty of provocative conduct. Indeed, it is difficult to imagine a situation where reliance on one's legal rights could be characterized as provocation in any legal sense.

23. The other branch of counsel's argument on the question of discretion gives us much greater difficulty. The Board's jurisprudence reveals a consistent - and hence usefully predictable - approach to the exercise of its discretion in applications of this sort. The principal considerations on the question of discretion are summarized in the National Refractories Ltd. case, 63 CLLC ¶16,206. Except in very special circumstances, the Board has consistently refused to issue a declaration where the strike has been settled before the application is heard. The exceptions, i.e., where there is a pattern of previous unlawful conduct on the part of the union for gaining its objectives in defiance of the law or where there is a reasonable apprehension that the offence will be repeated, are not applicable in the instant case. Moreover, it has often been stated that a declaration is not meant to be punitive, but rather, is intended primarily as aid to the settlement of labour disputes; a device, in short, to encourage resolution of the differences and the return to lawful courses of conduct. The Board must be cautious that its intervention, by way of declaration, will play some constructive role, rather than disrupt a relationship which, by the time of the hearing, has stabilized. Moreover, the force of the declaration may

diminish if the Board alters its practice and issues a declaration in every case, whether or not the strike is over. Arguably, the present procedure is itself an inducement to end the strike before the hearing.

24. The unique feature of this case is the context in which the strike arose. In both oral and documentary evidence adduced before us, references were made to the "Toronto settlement". Although the detailed facts surrounding the Toronto settlement were not put before us, the circumstances of that settlement are known to the public at large - indeed sufficiently well known, in our view, to permit us to take judicial notice of them: see the Statutory Powers Procedure Act, section 16. Briefly stated, the Toronto hospitals settlement was concluded in the face of a strike threat by the affected employees and their bargaining agent - a threat that was contrary to the law but which led to a settlement which provided substantial monetary gains for the affected employees. This led other hospital employees across the Province to request the re-opening of their collective agreements, in order to achieve parity with their Toronto counterparts. In some instances - Norfolk for one - the request to re-open was backed by the threat of a strike and later with the withdrawal of services.

25. It is not our function to comment upon the economic dilemmas faced, respectively, by the hospital employees and by the hospitals in Ontario in recent months. It is fair to observe in passing, however, that both sides were faced with difficult problems of an economic nature not entirely within their own control. However that may be, it is our duty, as we see it, as the tribunal seized with the primary responsibility for administering the Labour Relations Act and portions of the Hospital Labour Disputes Arbitration Act, to re-affirm the law as laid down in those two statutes. The criteria for exercising our discretion in applications of this sort, as set out in the National Refractories Ltd. case supra will no doubt continue to be appropriate in most circumstances. However, where, as here, there is a deliberate and sustained effort to flout the law, not only at the Norfolk hospital, but elsewhere across the province, we believe it to be our responsibility to so declare. To fail to do so might be construed, at worst, as a condonation of illegal conduct, or at the very least, as an abdication of our public responsibility.

26. Therefore, having regard to the particular facts of this case and to the representations of the parties, and pursuant to its powers under section 82 of the Labour Relations Act and section 8(2) of the Hospital Labour Disputes Arbitration Act, the Board declares that the strike was contrary to section 8(2) of the latter Act and therefore unlawful, and that the respondent union authorized the said strike, contrary to section 65 of the Labour Relations Act.

6191-74-R: International Beverage Dispensers' and Bartenders' Union Local 280, of The Hotel and Restaurant Employees' and Bartenders International Union A.F.L. C.I.O. C.L.C. (Applicant) v. RICHMOND INN LIMITED (Respondent).

BEFORE: R.A. Furness, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: J. Troll and J.A. Ryder for the applicant; A. David for the respondent.

DECISION OF THE BOARD: September 5, 1974.

1. The name "Known as Richmond Inn (Richmond Inn Ltd.)" appearing in the style of cause of this application as the name of the respondent is amended to read: "Richmond Inn Limited".
2. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
3. The applicant is seeking certification for a bargaining unit of all full time and part time tapmen, bartenders, beverage waiters, bar boys and improvers in the employ of the respondent at Richmond Hill, save and except manager and persons above the rank of manager.
4. The respondent is in agreement with the description of the bargaining unit with the exception that it proposes the exclusion of part time personnel.
5. For the past decade the Board has usually determined that the bargaining unit proposed by the applicant is appropriate for collective bargaining where the applicant is the trade union which makes the application and where a respondent's premises are either in Metropolitan Toronto or Oshawa. In the instant application, the respondent's premises are at Richmond Hill.
6. At the material times the respondent had in its employ eleven full time employees and two employees who are classified by the respondent as part time personnel. However, from information supplied by the respondent, it is clear that the two part time personnel are Barry Ladkin and Edward Price. Mr. Ladkin is called in to work for the respondent on an intermittent basis and, on the facts before us, on the occasions he is called in he works on a part time basis of not more than 24 hours per week. Mr. Price, on the other hand, is called in to work for the respondent for periods of full time employment.
7. On the evidence and representations before it, the Board finds that there is only one person in the employ of the respondent at the relevant times who may be considered as a part time employee.

8. If the Board were to exclude the part time employee, it would mean that having regard to the provisions of section 6(1) of The Labour Relations Act that such employee would be denied the opportunity to participate in collective bargaining. Such employee has indicated that he wishes to be represented by the applicant in collective bargaining.

9. The Board has, on past occasions, in circumstances similar to the instant application, included an employee who is regularly employed for not more than 24 hours per week in a unit of full time employees. Reference is made to the H. Gray Limited case, 55 C.L.L.C. ¶18,011; C.L.S. 76 - 471 and the Essex County Humane Society case, O.L.R.B. Monthly Reports, June 1969, p. 391. The Board proposes to include such employee in the appropriate bargaining unit determined below.

10. The question remains, however, of whether to describe the appropriate bargaining unit in terms of "all employees" or "all full time and part time employees". As stated in paragraph five herein, the Board has determined the bargaining unit requested by the applicant to be appropriate for collective bargaining in Metropolitan Toronto and Oshawa. The description proposed by the applicant reflects the employment patterns of the beverage dispensing industry and in our view is applicable to the respondent's premises at Richmond Hill.

11. Having regard to the foregoing considerations and to the circumstances of this application, the Board further finds that all full time and part time tapmen, bartenders, beverage waiters, bar boys and improvers in the employ of the respondent at Richmond Hill, save and except manager and persons above the rank of manager, constitute a unit of employees of the respondent appropriate for collective bargaining.

12. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on August 16, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

13. A certificate will issue to the applicant.

5993-74-R: Steven Clement, et al (Applicant) v. The Civil Service Association of Ontario, Inc. (Respondent) v. MUSKOKA AMBULANCE SERVICE (Intervener).

BEFORE: R.A. Furness, Vice-Chairman, and Board Members O. Hodges and H.F. Irwin.

APPEARANCES AT THE HEARING: Robert A. Tweedie for the applicant; Chris G. Paliare and Wilf Peel for the respondent; S.C. Bernardo and J. Thwaites for the intervener.

DECISION OF R.A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: September 9, 1974.

1. The applicant has applied to the Board under section 51 of The Labour Relations Act for a declaration that the respondent no longer represents the employees in the bargaining unit for which it is the bargaining agent. The applicant alleges that although the respondent has given notice under section 13 of The Labour Relations Act it has failed to commence to bargain within sixty days from the giving of such notice.

2. The facts concerning the events which led up to this application are not in dispute. On February 26, 1974, the Board issued a certificate to the respondent with respect to the employees affected by this application. On March 4, 1974, the respondent sent a telegram to the intervener in which it stated:

"This is to serve as notice per section 13
The Ontario Labour Relations Act of the
CSAO desire to bargain with a view to making
a collective agreement, the CSAO looks
forward to contract negotiations at the
earliest convenient time. Wilf Peel, Organ-
izing Officer, CSAO, Civil Service Association
of Ontario."

3. In a letter dated March 6, 1974, the intervener wrote to the respondent and stated:

"In reply to your telegram, received March 5,
1974. Arrange meeting in Bracebridge, at
mutual convenience.

(signed) James Thwaites
Muskoka Ambulance Service"

4. On April 25, 1974, the respondent sent the following telegram to the intervener:

"Due to the mail strike and the length of time required to develop a provincial negotiating stance Civil Service Association of Ontario is now prepared to commence negotiations at a time and place convenient to yourself."

This telegram was received by an employee of the intervener and a written confirmation of this telegram was not received by the intervener. The respondent did not receive a reply to this telegram.

5. On June 24, 1974, the respondent sent the following telegram to the intervener:

"This is to inform you the CSAO has been prepared to meet with you to negotiate a contract concerning your driver attendance at a mutually convenient time. Should you not contact us within the next two weeks we will be forced to request conciliation services from the Ontario Labour Relations Board."

6. On July 9, 1974, the respondent received the following telegram from the intervener:

"Have been prepared to meet with you at a mutually convenient time as stated in my telegram of March 5, 1974. Waited until June 25th, for a reply. Be advised the morning of July 24th, satisfactory for a meeting in Bracebridge at a place of your choice."

7. The respondent reserved a meeting room in the Muskoka Sands Motel for July 24, 1974, at 10:00 a.m. in order to meet with the employer and begin collective bargaining. This application was filed on June 28, 1974. The respondent made the arrangement for the meeting at the Muskoka Sands Motel in a telegram dated July 15, 1974. The hearing of this application was on July 23, 1974.

8. It was also agreed by the parties that Mr. Peel, the organizing officer of the respondent at the time the application for certification, represented to the employees that they would be contacted as regards representations on their behalf for collective bargaining. On May 23, 1974, the employees affected by this application, retained Mr. R.A. Tweedie as their solicitor to ascertain their status with the respondent. On May 29 and June 20, 1974, letters were sent by Mr. Tweedie to the respondent requesting information regarding the status of the employees with the respondent. On July 2, 1974, a reply was received

from the respondent indicating that it would contact the employees "to ascertain their present attitude towards collective bargaining". At no time, subsequent to certification, has the respondent contacted the three employees present at the hearing to ascertain their attitude towards collective bargaining and as far as these three employees are aware no other employees have been contacted by the respondent. As of the date of the hearing, neither a collective bargaining committee of employees nor a union steward have been appointed.

9. The applicant also filed and proved in evidence a statement of desire in support of this application on behalf of thirteen of the fifteen employees affected by this application. The statement of desire was preceded by a raise in pay which was received by the employees affected by this application on June 14, 1974.

10. The applicant argued that the events initiated by the respondent after its telegram dated March 4, 1974, were a sham and that the respondent had permitted a time period of approximately 120 days to elapse before it sought to bargain. The applicant pointed out that this time period was twice the period of time contemplated by section 51(2) of The Labour Relations Act. The applicant argued that the Board ought to terminate the bargaining rights of the respondent without the necessity of a representation vote and discounted the influence of the raise in pay received by the employees.

11. The intervener argued that the respondent had not offered a satisfactory explanation for its delay in bargaining and that there ought not to be a representation vote because the respondent had not even submitted proposals to the intervener and had not made any assertive application to further the interests of the employees. The intervener argued that the raise which was received in June 1974 had been requested and budgeted for in November of 1973 and that its effect on the origination of the statement of desire should be discounted.

12. The respondent argued that the Board ought to exercise its discretion and not terminate its bargaining rights notwithstanding the wishes of the employees. The respondent pointed out that it had actively pursued its bargaining rights even though it had not actually met and bargained with the intervener. The respondent pointed out that it had advanced a reasonable explanation in its telegram dated April 25, 1974, for its delay in commencing bargaining.

13. In the exercise of its discretion under section 51(2) of The Labour Relations Act, the Board ascertains whether a trade union which is the bargaining agent of certain employees has actively pursued its bargaining rights and forwarded the interest of the employees it represents. An application under section 51(2) of The Labour Relations Act enables an interested party to bring to the attention of the Board an allegation that a bargaining agent is not performing its mandate in

a proper manner. Once the application has been made, the bargaining agent is given an opportunity to account for any delay which may have occurred. The Board has taken the position that where a satisfactory explanation has been advanced by a bargaining agent, the Board in the exercise of its discretion ought not to deny the bargaining rights of the trade union concerned. Reference is made to the Oliver Lumber Company of Toronto Limited case, O.L.R.B. Monthly Reports, August 1963 p. 280 and to the Dominion Window & Floor Service Ltd. case, O.L.R.B. Monthly Reports, April 1969 p. 96.

14. In the exercise of its discretion under section 51 of The Labour Relations Act, the Board takes into consideration all of the surrounding circumstances even though the time limits stipulated therein have not been satisfied by a bargaining agent. In this case, it appears to us that the respondent's communication with the employees leaves something to be desired. Moreover, the various telegrams sent by the respondent to the intervener may well be interpreted as a temporizing device by a bargaining agent which was not ready to commence collective bargaining. Certainly the respondent could have pressed its request for a meeting with the intervener or could have forwarded draft proposals for a collective agreement for the consideration of the intervener. However, we are prepared to take official notice of the fact that the respondent has been certified in recent applications for several bargaining units which are similar in scope to the bargaining unit described in the certificate of the Board issued with respect to the intervener dated February 26, 1974. In addition, we find that the respondent has advanced a reasonable explanation for its delay in pursuing its role as a bargaining agent. We refer to the telegram sent by the respondent dated April 25, 1974 in which mention is made to the length of time required to develop a provincial negotiating stance with reference to the bargaining unit described in the certificate of the Board issued with respect to the intervener on February 26, 1974.

15. The respondent gave notice to bargain on March 4, 1974. Sixty days beyond that date indicates a point in time in early May. However, well before that point in time, on April 25, 1974, the respondent again sought to bargain with the intervener. The fact that the telegram was not transmitted to intervener was apparently not the fault of the applicant. In addition, the respondent again on June 26, 1974, requested the intervener to meet and bargain. This request was made two days before this application was filed on June 28, 1974. In the Village of Point Edward Public Works Department case, O.L.R.B. Monthly Reports, November 1966, p. 615, the Board stated:

"...if a trade union has permitted sixty days to elapse during which no bargaining takes place and subsequently seeks to bargain prior

to an application being made under the provisions of section 45(2) [now section 51(2)] of the Act the Board will not terminate the bargaining rights. In such a case the trade union concerned has, in fact, taken steps to forward the interest of the employees it represents prior to the making of the application and accordingly no purpose would be served by terminating its bargaining rights (see Moyer Sand (1965) Limited case, O.L.R.B. Monthly Reports, March 1966, p. 913 and the cases therein referred to)."

16. On the facts before us, we find that the respondent has taken steps to forward the interest of the employees it represents immediately prior to the making of this application for termination.

17. In summary, we find that the conduct of the respondent in pursuing its role as a bargaining agent leaves something to be desired. However, we are satisfied that the respondent ought to be given an opportunity to pursue its role as a bargaining agent. The Board notes that a meeting between the respondent and the intervener was scheduled for July 24, 1974, the day after the hearing of this application, and that the counsel for these two parties informed the Board that their clients to meet on that day.

18. In the result, having regard to all the circumstances of this application, we exercise our discretion in favour of the respondent trade union and dismiss the application.

DISSENTING DECISION OF BOARD MEMBER - H.F. IRWIN: September 9, 1974.

1. Section 51(2) of The Labour Relations Act provides for two distinct situations under which an application may be made by an employee in the bargaining unit or an employer for a declaration by the Board that the trade union no longer represents the employees in the bargaining unit:

- (1) where, following certification as bargaining agent, a trade union has given written notice to the employer of its desire to bargain with a view to making a collective agreement and fails to commence to bargain within sixty (60) days from the giving of the notice; and
- (2) after having commenced to bargain, but before the Minister has appointed a conciliation officer or a mediator, allows a period of

sixty (60) days to elapse during which it
has not sought to bargain.

2. The Board, on the evidence before it, may, with or without first holding a representation vote, declare that the trade union no longer represents the employees in the bargaining unit.

3. In the instant case, the application was made by an employee, et al, in the bargaining unit for which the respondent union is the certified bargaining agent. The application stated that the respondent has failed to commence to bargain within the sixty (60) day period immediately following the giving of notice of its desire to bargain or at any time subsequent thereto.

4. The relevant facts are not in dispute and may be summarized as follows:

Feb. 26 The respondent was certified as the bargaining agent for all employees of the intervener (employer) in Bracebridge and Gravenhurst save and except supervisors, persons above the rank of supervisor and office staff.

March 4 The respondent gave notice to the intervener under section 13 of the Act of its desire to bargain with a view to making a collective agreement.

March 6 The intervener informed the respondent it would meet in Bracebridge at mutual convenience.

April 25 Respondent sent a telegram to intervener stating it was now prepared to commence negotiations at a time and place convenient. It stated the delay (52 days) had been "due to the mail strike and the length of time required to develop a provincial negotiating stance."

This telegram was read over the telephone to an employee of the intervener but the employee did not inform the management that a telegram had been read to him (or her) over the telephone and the telegraph company did not mail a copy of the communication to the intervener. Consequently, the intervener had no knowledge of its existence. Notwithstanding that no reply had been received from the intervener, the respondent did not take any steps whatever to

ascertain the reasons therefor, nor did it make any further effort to initiate the commencement of bargaining.

- May 23 Not having received any communication whatever from the respondent union, although eighty (80) days had elapsed since the respondent gave notice of desire to bargain under section 13 of the Act, the employees in the bargaining retained Mr. R.M. Tweedie, a solicitor at Bracebridge, to advise them as to what action they should take to protect their interests.
- May 29 Mr. Tweedie wrote the respondent to ascertain the present status of the employees in the bargaining unit. No reply was received.
- June 20 After waiting 21 days from the date he mailed his first letter to the respondent and receiving no reply, Mr. Tweedie again wrote the respondent requesting information in respect of the status of the employees. As of the date of this application, June 28th, no reply had been received from the respondent.
- June 28 Steven Clement, et al employees in the bargaining unit for which the respondent is the certified bargaining agent, applied to the Ontario Labour Relations Board under section 51(2) of The Labour Relations Act for a declaration that the respondent no longer represents the employees in the said bargaining unit.

5. The application contained the following relevant statements:

Applicant states:

- " (i) The bargaining union was certified on the 26th day of February 1974 and since that date the employees of The Muskoka Ambulance Service have not been contacted in any way by the respondent union. The respondent union has not even indicated to the employees whether the certification was successful and such information had to be obtained through the Labour Relations Board.
- (ii) The union has not approached the employees of The Muskoka Ambulance Service to discuss bargaining proposals or to establish an employee bargaining committee.

- (iii) To the best knowledge of the applicants no negotiations have taken place between the responding union and The Muskoka Ambulance Services since the date of certification.
- (iv) The applicants have directed their solicitor to determine whether the union has applied for conciliation services. As of the date of this application, the respondent union has not applied for conciliation services."

[emphasis added]

6. The above statements are not denied by the respondent union which apparently has made no effort to communicate with the employees for whom it is the sole bargaining agent. Moreover, it is clear that it has not commenced to bargain for a collective agreement on their behalf up to the date of this application.

7. In addition, there was attached to the application an undated typewritten document containing the signatures of thirteen (13) persons purporting to be employees of the intervener. The heading on the document is "PETITION" and below it is the following statement:

"WE, the undersigned employees Muskoka Ambulance Services hereby indicate that we no longer wish to be represented by the Civil Service Association of Ontario, Inc."

[emphasis added]

(13 signatures follow)

Evidence
at
hearing
July 23

At the hearing before the Board on July 23rd, the Board conducted its usual thorough and searching examination into the origination, preparation and circulation of the petition. In addition, the applicant, Mr. Steven Clement, was subjected to cross-examination by the solicitor for the respondent trade union. On the evidence before it, the Board found the petition represented a voluntary expression of the true wishes of thirteen (13) of the fifteen (15) employees (86.6%) in the bargaining unit on the date of application that they no longer wish to be represented by the respondent trade union.

July 2

Mr. Tweedie received a reply from the respondent indicating that it would contact the employees "to ascertain their present attitude towards collective bargaining". In this regard, it is an agreed fact that at no time subsequent to certification on February 26th, has the respondent contacted the three (3) employees present at the hearing to ascertain their attitude towards collective bargaining and, as far as these employees are aware, no other employees in the bargaining unit have been contacted by the respondent trade union. This statement was neither denied nor challenged by the respondent. On the date of this application, June 28th, one hundred and fifteen (115) days had elapsed since the respondent served notice to bargain on March 4th.

Application
timely

All parties agree that the application is timely. The only issue before the Board is whether there is any valid and plausible reason why the Board in the exercise of its discretion should not make the declaration sought by the applicant that the respondent trade union no longer represents the employees in the bargaining unit.

Majority
Decision

My colleagues have extended to me the courtesy of reading the majority decision. The reasons for the decision are finalized in paragraphs 13, 14 and 15 therein.

At paragraph 13, the Board poses the question:

"Has the bargaining agent actively pursued its bargaining rights and forwarded the interests of the employees it represents?"

In my opinion the answer is a resounding "NO". The union has not even contacted the employees since some time prior to February 26th which is the date the Board issued a certificate certifying the union as their sole bargaining agent.

At paragraph 14 of the majority decision, the Board states that:

"In this case, it appears to the Board that the respondent's communication with the employees

leaves something to be desired. Moreover, the various telegrams sent by the respondent to the intervener may well be interpreted as a temporizing device by a bargaining agent which was not ready to commence collective bargaining. Certainly, the respondent could have pressed its request for a meeting with the intervener or could have forwarded draft proposals for a collective agreement for the consideration of the intervener. However, the Board is prepared to take official notice of the fact that the respondent has been certified in recent applications for several bargaining units which are similar in scope to the bargaining unit described in the certificate of the Board dated February 26, 1974. In addition, the Board finds that the respondent has advanced a reasonable explanation for its delay in pursuing its role as a bargaining agent. The Board refers to the telegram sent by the respondent dated April 25, 1974, in which reference is made to the length of time required to develop a provincial negotiating stance with reference to the bargaining unit described in the certificate of the Board issued with respect to the intervener on February 26, 1974."

[emphasis added]

With respect, I do not think the bargaining agent has advanced a satisfactory explanation for the delay. Only with the approval of the employees in the bargaining unit herein should the union be allowed to neglect their interests with impunity while it carries on organizing efforts elsewhere. The primary purpose of sections 13 to 34 of The Labour Relations Act is to stimulate the bargaining progress and to assist the parties in making a collective agreement without undue delay. Where a bargaining agent fails to act with reasonable promptness, as in the instant case, the Legislature has decreed that it is in the public interest to provide an avenue of relief to the employees concerned and enacted section 51(2) of The Labour Relations Act.

Interpretation
Act, R.S.O.
1970, c. 191

In exercising the discretion given to it under the provisions of section 51(2) of the Act, the Board is given specific instructions under section 10 of The Interpretation Act which reads as follows:

"Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of anything that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best insure the attainment of the object of the Act according to its true interest, meaning and spirit."

[emphasis added]

It is the duty and responsibility of this Board, therefore, to give the provisions of section 51(2) of The Labour Relations Act such fair, large and liberal construction and interpretation as will best insure the applicant, Steven Clement, et al, receiving the relief requested. There must be very cogent reasons for not granting it. The Board, in exercising its discretion, must not frustrate the objectives of the statute which conferred the discretion. This is especially true where, as here, the complaint is both substantial and genuine and not frivolous, hasty or vexations.

8. In review:

- (1) The respondent did not contest the statement of the applicant that the union has not at any time informed the employees that it was certified as its sole bargaining agent on February 26th, 1974.
- (2) The respondent union did not deny the statement of the applicant that it has not met with the employees in the bargaining unit to review their wage rates, hours of work and other working conditions which is a prerequisite to the commencement of bargaining.
- (3) The respondent has failed to prepare and present to

the employer a proposed collective agreement which would serve as a basis to commence to bargain.

- (4) The respondent has not appointed or otherwise arranged for the employees to choose one or more employees to serve on the bargaining committee and to be present at the bargaining table.
- (5) As of the date of this application, June 28th, the respondent had failed to even acknowledge the two letters written by the solicitor for the applicant on May 29th and June 20th respectively to ascertain the status of the employees.
- (6) The applicant has used the provisions of section 51(2) as a shield and not as a sword in accordance with the announced policy of the Board in the Dominion Stores Limited case, C.L.L.R., Transfer Binder 1955-1959, at paragraph 16,047, p. 12,090.
- (7) After having staked out a claim to represent these employees, the respondent has taken no meaningful steps in a reasonable time to forward their interests. In the Dominion Stores Limited case, supra, the Board stated that the purpose of the section was to protect the employees against the union in these precise circumstances. The section prescribes a delay of 60 days. In the instant case, the bargaining had not commenced after 115 days as of the date of application.

9. I can't conceive a more flagrant case of a trade union so completely neglecting the general welfare and the bargaining rights of the employees for whom it has been certified as the sole bargaining agent. It has done nothing to attempt to improve their working conditions and has ignored them completely since the date of certification, February 26, 1974. If these employees are not entitled to the relief requested under the circumstances described above, then the provisions of section 51(2) of the Act as they apply thereto have no real meaning and the expressed intention of the Legislature to make available to them an avenue of relief is completely flouted and ignored.

10. For the above reasons, I would have made a declaration terminating the bargaining rights of the respondent trade union forthwith. I hasten to add, however, that if the Board had directed the holding of a representation vote, I would not have dissented.

ADDENDUM:

Since writing the above reasons for dissenting, my colleagues inform me that they have inserted what is now paragraph 15 in the majority decision. Reference, therein, is made to the Board's reasons for decision in the Village Point Edward Public Works Department case and the Moyer Sand (1965) Limited case. In both cases the application was made by the employer and not the employees as in the instant case.

In the Village of Point Edward Public Works Department case, the application pertains to a situation where it is claimed that 60 days have elapsed during which the union "has not sought to bargain" whereas the instant case deals with the situation where having given notice to bargain the union "fails to commence to bargain" within sixty days from the giving of the notice. Consequently, I do not think the reasons for dismissing the application in the Point Edward case apply here.

In the Moyer Sand (1965) Limited case, only sixty-three days elapsed between the giving of notice of desire to bargain and the filing of the application. In the instant case, one hundred and fifteen days had elapsed during which the parties had not commenced to bargain.

Not having replied to or even acknowledged the two letters sent on May 29th and June 20th respectively to the respondent union on behalf of the employees by their solicitor, Mr. Tweedie, it is a denial of the relief intended by the Legislature and renders section 51(2) of The Labour Relations Act meaningless for the Board to give weight to the telegram sent to the employer by the respondent union on June 24th, in which it merely requested a meeting, and dismiss this application made by the applicant employees on June 28th. Parties can't commence to bargain until there is a proposal on the bargaining table to bargain about. No such proposal had been sent to the employer by the respondent union up to and including the date of application, June 28th, 1974. In fact, as of the date of the hearing on July 23rd no proposals had been received by the employer.

In the Moyer Sand case (supra), the Board stated in its reasons for decision at paragraph 8 as follows:

"...the lack of diligence displayed by the respondent in carrying out its obligations as the bargaining agent for the employees of the applicant gives rise to a reasonable doubt as to whether the respondent still commands the support of the employees. Accordingly, in all these circumstances, we are of the opinion that a representation vote should be taken to ascertain the wishes of the employees."

In the instant case, the Board on the evidence before it found that thirteen of the fifteen employees in the bargaining unit (86.6%) on the date of application had signified in writing that they no longer wished the union to be their bargaining agent. There is no question here, as there was in the Moyer case, that the union no longer commands the support of the overwhelming majority of the employees in the bargaining unit. Notwithstanding this important factor, I repeat that I would not have dissented if the Board had directed a representation vote in the instant case.

6291-74-R: International Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. FORMOSA SPRING BREWERY (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members P. J. O'Keeffe and W. H. Wightman.

APPEARANCES AT THE HEARING: E. G. Posen for the applicant; M. G. Mitchnick and G. Hines for the respondent; no one appearing for the intervener; H. E. McArthur and D. Todd for the objectors.

DECISION OF THE BOARD: September 13, 1974.

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2. The Board further finds that all employees of the respondent employed at the company operation in Barrie, Ontario, as groundskeepers and park attendants save and except park manager and those above the rank of park manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

3 The Board further finds that Mr. H. E. McArthur is a working foreman and as such does not exercise managerial functions under section 1(3)(b) of The Labour Relations Act. (see; The Corporation of the County of Norfolk Case OLRB M.R. January 1974, 35).

4. There was a statement of desire filed in opposition to the instant application. If the Board were to give credence to this statement, we would be obliged, in accordance with our established practice, to direct a representation vote. Mr. McArthur and Mr. D. Todd gave evidence with respect to the origination, preparation and circulation of the petition. It appears that a meeting of those employees who were signatories to the petition took place at the noon lunch break of August 29, 1974. Mr. William Soules, who was on vacation at the time was called by Mr. Todd and invited to attend the meeting. The evidence adduced

indicates that it was unanimously resolved to oppose the applicant's application for certification and therefore Mr. Soules offered to attend the offices of a lawyer in Stroud, Ontario, for instructions. The lawyer appears to have prepared the document and thereupon instructed Mr. Soules with respect to its circulation amongst interested employees. The next day Mr. Soules presented the petition to his colleagues at a noon hour meeting. The employees drew numbers and signed the document in the presence of each other in accordance with the number drawn. After the document was signed, Mr. Soules took custody of the document and apparently arranged for the mailing of the document by registered post to the Board's offices in Toronto.

5. The Board has often stated that parties appearing in support of a petition must adduce first hand evidence of origination, preparation and circulation of the document. Failure to do so will result in the Board setting aside the petition. (see; Weyerhaeuser Canada Limited OLRB M.R. February 1974 599; Village Contractors OLRB M.R. July 1966, 231). Here, Mr. Soules appears to have played a significant role in the preparation and circulation of the document. It was Mr. Soules who attended the lawyers office to secure the petition; it was Mr. Soules who delivered the document to the employees for their signatures; and, it was also Mr. Soules who assumed the responsibility of dispatching the document to the Board. No first hand evidence was adduced before the Board in support of the custody of the document at the point of its actual preparation or its point of delivery to the Board. Only Mr. Soules was in a position to complete the evidence of satisfying the Board with respect to the origination and circulation of the petition. More particularly, in a like situation, the Board stated in The Vered and Harvey Company Limited case OLRB M.R. November 1971, 736, the following:

"In attempting to decide what weight is to be given to a petition which, in effect, purports to reverse or revoke the previously expressed intent of the petitioners to join the union, as evidenced by the membership cards signed by them and filed with the Board, the Board has felt that it ought to satisfy itself on the evidence that a petition filed in opposition to an application for certification is free both in its origination and its circulation from any influence or interference on the part of management. For that reason, the question of the custody of the petition throughout the period when it is being signed has always been regard as a key one in the Board's determinations." (emphasis added)

6. The Board therefore cannot attach any weight to the document and therefore sets aside the petition filed in opposition to the instant application.

7. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on September 3, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

8. A certificate will issue to the applicant.

5020-73-R: United Brotherhood of Carpenters & Joiners of America, Local Union 93 (Applicant) v. TEMPLET SERVICES (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: J.P. Nelligan for the applicant; John D. Richard and R. Hoppe appearing for the respondent; F.R. von Veh appearing for Manpower Services (Ottawa) Limited.

DECISION OF THE BOARD: September 13, 1974.

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4. The applicant is applying for certification for its regular craft unit of carpenters and carpenters' apprentices in the Board's geographic area #15.

5. The Board has considered the representations of the parties on the Report of the Examiner dated June 6, 1974. There are three issued to be decided by the Board. Firstly, are the persons affected by this application employees of the respondent? If the answer to this question is in the affirmative, then the second question is, are these employees of the respondent employed as carpenters? Then, the third question is whether the respondent is an employer who operates a business in the construction industry within the meaning of section 106(c) of The Labour Relations Act.

6. The evidence establishes that January 11, 1974, the date of the making of this application, the respondent was engaged in the installation of metal library shelving at the National Research Centre Library in Ottawa. The respondent was performing this installation work by using the labour of five or six persons.

7. The respondent contends that these five or six persons were not employees of the respondent but were employees of Manpower Business Services (herein referred to as "Manpower") and were supplied to the respondent.

8. The evidence indicates that the respondent receives invoices from Manpower for the persons who report to work and the respondent makes payment to Manpower accordingly. The parties agreed that the respondent could call for employees from Manpower and that Manpower also pays the employees.

9. The evidence of Steven J. Geriffin, one of the persons in dispute, establishes that he works for Manpower and was given a sheet by two persons at Manpower and told to report to the job which forms the subject of this application. On the job he reported to Mr. Hoppe, who was project manager of the job under consideration and who is also a principal of the respondent. The witness stated that Manpower told him what the rate of pay would be. Mr. Hoppe told Mr. Griffin what to do and when to do it and the former decided the number of hours to be worked. The sheet which the witness received from Manpower was good for five days and if he started on a Monday he would hand the sheet to Manpower each Wednesday. He reported straight to the job each day and Mr. Hoppe entered the hours worked, totalled it at the end of the period and signed his time sheet.

10. Mr. Geriffin receives his pay each Friday from the Manpower office and Manpower deducts income tax, Canada pension and unemployment insurance. If the witness does not like a job he could request Manpower to assign him to another job and in this event Manpower would be responsible for sending someone to replace him. The witness believed that if he walked off the job Manpower could probably fire him. Mr. Geriffin stated that Mr. Hoppe could have asked Manpower to replace him if he had wished and that in the case of some employees did so. The starting times for the work were set by Mr. Hoppe who entered the hours worked on the witness' time sheet and also in his own book. Manpower did not have a foreman on the job.

11. The witness goes to Manpower's office and is informed where he is to report for work and the time he is to start. Sometimes he is taken to jobs in a bus. He would normally report to Manpower's office every morning unless he had a job which was going to last two or more days. If someone wants him for more than one day he must inform Manpower's office. The witness did not receive any payment from the respondent.

12. The witness also indicated that if any discipline is imposed on him it would be meted out by Manpower. Mr. Hoppe gave evidence that he receives invoices from Manpower. The copies of the invoices and

cheques introduced in evidence indicate that the respondent is billed weekly on the basis of the number of hours of labour provided by Manpower and that the respondent has drawn a cheque payable to Manpower to cover the amounts shown on the invoices. Mr. Hoppe stated that he does not receive any record of the employees' deductions.

13. As the Board stated in the Belcourt Construction (Ottawa) Limited case, OLRB M.R. June 1971, p. 321, there are two essentials in the relationship of employer and employees. Firstly, the employee must be under the duty of rendering personal services to the employer, and, secondly, the employer must have the right to control the employee's work, either personally or by another employee or agent.

14. The fact in this case establish that the persons affected by this application are under a duty of rendering personal services to Manpower, albeit, these services are performed on premises designated by the respondent. While the immediate direction of these persons is undertaken by Mr. Hoppe, the overriding control of their work clearly resides in Manpower. In addition, there is no evidence before the Board of any intention between the respondent and the persons affected by this application to create the relationship of employer and employee. Manpower provides a service which the respondent has evidently found some occasion to use. The fact that the persons affected by this application are in close physical proximity to the respondent does not obscure the underlying nature of the relationship between them and Manpower. It is to Manpower that they work for setting the rate for the job, payment of wages, assignment to jobs, overall control and to whom they, in reality, render their services.

15. The Board finds that the persons affected by this application are employees of Manpower and not of the respondent.

16. In addition, the Board finds that the persons affected by this application are not carpenters. Having regard to the decision of the Board on the first and second points, it is unnecessary for the Board to address itself to the third point.

17. Having regard to the provisions of section 6(1) of The Labour Relations Act, the Board finds that there is not a unit of employees that is appropriate for collective bargaining.

18. In the result, this application is dismissed.

DECISION OF BOARD MEMBER E. BOYER: September 13, 1974.

1. I agree with the majority decision that the persons affected by the application are not carpenters and, accordingly, I concur in the end result. I do not wish to be understood, however, as necessarily agreeing with the finding that the persons affected by this application are not employees of the respondent.

5470-74-U: Ward Shellington and Those Persons Named In Schedule "A" Attached Hereto (Complainants) v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED, TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323, CHARLES HILL, ALEXANDER JACKSON, SYDNEY HARKER, JOHN WYND, ALBERT BATTILL, ANSTRUTHER WILLAIMSON, GEORGE JONES, HARVEY STEWART, LESLIE COOK AND BRUCE STARKEY (Respondents).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members P.J. O'Keefe and J.E.C. Robinson, Q.C.

DECISION OF G.W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFE: September 13, 1974.

1. The respondent, Imperial Tobacco Products (Ontario) Limited, by letter dated July 25, 1974, and addressed to the Registrar of the Board, has asked the Board to reconsider its decision of July 3, 1974 in this matter.

2. More particularly, the respondent has requested the Board to reconsider the rulings that; 1) the employer was a proper party to the complaints filed by the applicants; and, 2) the Board would retain jurisdiction for the limited purposes outlined at paragraph 34, page 25 of its decision.

3. Section 95 of The Labour Relations Act R.S.O. 1970, c. 232, provides the Board with a unique jurisdiction to "..., if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling." However, this jurisdiction is very carefully and cautiously exercised by the Board in that free recourse to the Board after the initial disposition of a matter would substantially undermine those values of speed and economy associated with the administrative practice of this Board. In other words, except for exceptional circumstances, litigation between the parties ought not to be prolonged. This principle was approved of in International Nickel Company and United Steelworkers of America, 63 CLLC ¶16,284. Therefore, unless it can be established that new evidence is proposed to be adduced and this evidence could not have been obtained by reasonable diligence before the original hearing in this matter, the Board ought not to entertain the request for reconsideration.

4. In this case no question of additional evidence is involved. In fact the original hearing involved very little evidence and was devoted to rather detailed legal argument that could be characterized as preliminary in nature. Rather in this case, one of the respondents wishes to make additional legal argument although it had every opportunity to make submission to the Board at the original hearing. For this reason alone the Board should be exceptionally cautious in even

beginning to entertain reargument. But having said this, it should not be said that the Board will never listen to additional legal argument particularly when its original decision is clearly wrong in law or inadvertently contrary to earlier Board practice. In such circumstances it is indeed fortunate that the Board has power to correct its error and thereby avoid the need for one or both of the parties to spend the time and money entailed in having some other forum consider the Board's decision (which, having regard to the privative clause in the legislation, might prove fruitless in any event).

5. Therefore, the Board considered the respondent's request very carefully from the viewpoint of these aforementioned principles. But having done so, it does not believe that the aforementioned grounds for reconsideration exist in the circumstances. More importantly it believes that all of the respondent's contentions were sufficiently considered by the Board in its earlier decision.

6. However to avoid any doubt a few brief comments may be in order. First, we do not believe that Dennis H. O'Keefe Ledger No. 64300 et al OLRB M.R. April 1972, page 298; Brian F. O'Donnell et al OLRB M.R. May 1972, page 423; and, Ronald G. Lewis and United Association of Plumbers and Steamfitters Local 221 (Board File No. 5260-73-U) stand for the proposition that an employer has no status in a section 79 complaint where section 60 is involved. Furthermore, none of those cases considered the implications of the wording found in section 79 or the other substantive sections relied upon by this panel in deciding as it did. But, even if they did stand for the above proposition, this panel of the Board would not have followed them.

7. In response to the respondent's particular reliance upon Ronald G. Lewis (*supra*) for the proposition that the Board is not, in any inquiry under section 60, primarily engaged in a consideration of the merits of the complainant's case as between the complainant and the company, we would again refer the respondent to Donald G. Gebbie and J. Michael Longmoore v. United Automobile, Aerospace and Agricultural Implement Workers of America, Local 200; Ford Motor Company of Canada, Limited, OLRB M.R. October 1973 page 519, and Joseph Pap and I U.E., Local 523, and RCA Ltd., [1974] Canadian LRBR 74. While the proposition is sound in a consideration of whether section 60 has been violated by the trade union, it has no application after that violation has been established and the question of remedy arises; and it has no application if the employer, in the course of its dealings with the employee, has acted contrary to the Act.

8. As for the possibility of "double jeopardy" mentioned in paragraph 4 of the respondent's July 25, 1974 letter, we can only say that this is the kind of argument that should be made to the Board if the merits of these complaints ever come before it. The fact that

an employer, if and when called upon, can establish that it did not violate any substantive section of the legislation and that it has dealt with the trade union (the exclusive bargaining agent of the employees) in a good faith, bona fide manner, would be a strong argument against it (the employer) having to shoulder any of the relief or remedy issued by the Board under section 79.

9. Finally, in response to the respondent's submissions in regard to the Board's power to retain jurisdiction in the way that it did, we point to the discretionary wording of section 79 and the difficult task of integrating it with the grievance arbitration process mandated by section 37 of the Act. We believe, at least for the circumstances of this case, if the Board is going to defer to another process and at the same time maintain its responsibilities under the Act, it must do so in the way that was done in this case.

10. Therefore, in light of all of the foregoing, the respondent's request for reconsideration is denied.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: September 13, 1974.

1. I dissent.

2. I am not in agreement with the decision of the majority wherein it finds that an employer may be joined as a party in proceedings alleging a violation by it of section 60 of The Labour Relations Act.

3. Inter alia, the complainants herein, allege that they have been dealt with by the respondent company contrary to the provisions of section 60 of The Labour Relations Act, and request that the respondent company, its respective agents, officers, officials, servants, employees, representatives, substitutes and all other persons acting for and on its behalf, refrain from interfering in any manner whatsoever with the seniority rights of the complainants and any other apprentices or tradesmen who have successfully completed their apprenticeship and are employed by the said respondent, contrary to the aforementioned collective agreement.

4. The section which the respondent company is alleged to have violated is stated as follows:

60. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not

members of the trade union or of any constituent union of the council of trade unions, as the case may be.

5. In Dennis H. O'Keeffe Ledge No. 64300 Teamsters, Chauffeurs, Warehousemen & Helpers Local Union 880, Windsor, Ontario v. Ryanconcrete - Sterling Products, Windsor, Ontario et al [1972] OLRB Rep. (April) 298, a complaint under section 79 of The Labour Relations Act in which the complainant alleged that he had been dealt with by the respondents, including a respondent company, contrary to the provisions of section 60 of the Act, the Board indicated its only concern was whether or not the decision of the respondent union vis-a-vis the complainant's seniority rights was reached in good faith and noted at p. 301 as follows:

"The complainant named the employer as a respondent, notwithstanding the fact that section 60 of the Act has direct reference only to the union."

Similarly, in Brian F. O'Donnell v. Amalgamated Meat Cutters and Butcher Workmen of North America and Steinbergs Limited otherwise known as Miracle Food Mart [1972] OLRB Rep. (May) 423, again a complaint under section 79 of The Labour Relations Act alleging a violation by the respondents, including a respondent company, contrary to sections 58(a) and 60 of the Act, the Board after reciting section 60, stated:

"As has been pointed out in previous cases, see for example, Percy Woods and Napanee Industries Ltd. [1971] OLRB Rep. 730, section 60 imposes a duty on a trade union, but it does not impose any duty on an employer. It follows, therefore, that the complainant is not entitled to rely on section 60 in so far as his complaint relates to the respondent company."

What could be more explicit than the language used by the Board in these previous cases.

6. Indeed, I am compelled to say that the majority of this panel should be commended for having the perspicacity to realize that the previous panels of this Board who decided the heretofore mentioned cases (all of which were brought under the provisions of section 79 of The Labour Relations Act, joining the employer and alleging a violation by it of section 60) had not the foresight to consider the ramifications of section 79 as if applied to alleged violations of

section 60 by the employer, notwithstanding that that was the very issue which confronted such panels.

7. I cannot agree that the earlier panels through either neglect or lack of comprehension, did not consider the very question which confronts this panel now, and having so considered the problem, delivered findings diametrically opposed to those made by the majority.

8. If that be so, and we must acknowledge that it is, it must be most gratifying to the majority of this panel, notwithstanding the earlier jurisprudence, to be able to thrust itself into an exalted position as an appellate division of the Board, and pass judgment by overruling earlier findings of the Board.

9. Nor is the finding of the majority consistent with the general scheme of the Act.

10. One need only to read the opening preamble of the Act to see that this is so.

"Whereas it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees."

(emphasis added)

Similarly, section 59(1) reads as follows:

"59.-(1) No employer, employers' organization or person acting on behalf of an employer or an employers' organization shall, so long as a trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with any person or another trade union or a council of trade unions on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them."

11. It should be readily apparent that if the employer in the instant case had attempted to accede to the wishes of the individual

employee complainants, this Board might well have found that the employer had breached the provisions of section 59(1) of the Act.

12. It is my opinion, and I would so find that the duty to fairly represent, and consequently any liability attendant with a failure to do so, must rest with the exclusive bargaining agent of the employees in question. Any obligations of the company, in that regard, are covered by the collective agreement, and it alone. It follows, of course, that an employer cannot conspire with the incumbent trade union to act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of its employees when there is no obligation upon the company to represent them.

13. I would have thought that it was apparent that the only obligation of the company concerning the seniority rights of the complainants would arise under the terms of the collective agreement.

14. It would now seem, however, in view of the majority decision, that not only must the company respond to alleged violations of that agreement by way of grievances filed by the respondent union, but it must also oversee the actions of the exclusive bargaining agent in its conduct with its members, lest it be joined in proceedings before this Board for a violation of section 60.

15. To me, this was neither intended by the legislation, nor should it be permitted by this Board, for to do so is not only to place the company in a position of double jeopardy, but to suggest that company deal individually with their employees rather than with the exclusive bargaining agent.

16. The majority has fairly set out the argument of the respondent union and the respondent company in paragraphs 13 and 14 of its award that the individual respondents, and the company were not proper parties to a proceeding alleging a violation of section 60 of the Act.

17. I would agree with such argument and accordingly dismiss the complaints against the individual and corporate respondents in that regard.

18. It would appear from the majority decision that it completely disregards the earlier jurisprudence of this Board, and instead relies heavily upon the jurisprudence of the United States of America. I am not prepared to turn my back upon the jurisprudence of this Board, and import in its stead jurisprudence of another jurisdiction, legislated under another Act, in a different economic, social and political sphere.

19. Neither am I in agreement that this Board should extend a paternalistic arm over the arbitrator who will, and should, adjudicate upon any grievance arising from this problem. In my opinion, the

proper forum for such adjudication is derived from the terms of the negotiated collective agreement and it is not for this Board to intrude and in so doing act in an appellate role for the purpose of determining the adequacy, fairness or promptness of an arbitrator's award. It follows therefore, that I would dismiss this application and find that it was incumbent upon the complainants to attempt to obtain relief under the collective agreement.

20. In conclusion, I may say that I have had an opportunity of perusing the award of the majority upon the request for reconsideration of the initial majority award. In a general way, I am in agreement that that portion of the decision which deals with the policy of the Board on requests for reconsideration is correctly reflected in such decision.

6159-74-U: Mr. Angelo Colacci (Complainant) v. LOCAL 46 OF PLUMBERS & STEAMFITTERS UNION (Respondent).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES AT THE HEARING: Angelo Colacci, complainant, L.C. Arnold and Bill Howard for the respondent.

DECISION OF THE BOARD: September 20, 1974.

1. This is an application under Section 79 of the Act, in which the complainant alleges that he has been dealt with by the respondent contrary to the provisions of Section 60 of the Labour Relations Act.

2. The complainant was at all material times a member of the respondent trade union.

3. On or about the 23rd of May, 1974, the complainant was hired by the Comstock Company as a result of his personal application to that company. The complainant duly obtained a reference slip from the respondent union and worked for Comstock on the Royal Bank project in Toronto until laid off on June 5th, 1974.

4. The complainant was advised of the lay off at approximately 2 p.m. on June the 5th, but was paid for the full day in accordance with the provisions of a collective agreement governing the relationship between the respondent and the Comstock Company. The same agreement provides for the filing of grievance not later than two regular working days after the occurrence of notification. The complainant however, did not file a grievance within the time limited by the collective agreement. Indeed, the complainant did not complain to the union concerning his lay off until June 10th, 1974, although notified of this

lay off at 2 p.m. on June 5th. The complainant was paid for a full days work for June 5 in accordance with the collective agreement related to lay off. The complainant on leaving the job did not report to the union office but went to his home.

5. On June 7th after he had previously visited the Unemployment Insurance Commission, Manpower and the Ontario Labour Relations Board, the complainant went to the union office in an attempt to find out the names of persons whom he believed had obtained employment with or had been transferred to other Comstock jobs while he was being laid off.

6. The complainant attended the union office on June 10th, to sign his name in the book kept by the respondent to record the names of members who are out of work. This book is referred to by the union dispatcher when calls are received at the union office from employers who are seeking plumbers. The undisputed evidence is that the practice of the union is to answer employers' requests by sending out available members in accordance with the order of their registration in the book. The members who are sent are provided with a referral slip by the union.

7. The union also, (as it did in the case of complainant's job with Comstock) issues referral slips to members who have themselves sought and obtained employment through their own efforts. In the latter case no reference is made to the book. The complainant testified that while he was waiting to enter his name in the book he discovered that a person in line ahead of him was going to a Comstock job at Newmarket. The complainant, although unaware as to whether the dispatch of this person was due to solicitation or based on the order of his registration in the book, was considerably upset at what he had discovered. He went to William Howard the Business Manager of the respondent and complained to him, that he was annoyed at the way he had been laid off and that he was really sick about it. It appeared to the Board that the complainant was upset and disturbed because other persons had been kept at the Royal Bank job or has been transferred to other Comstock jobs while he was being laid off, and in particular by his conclusion that the union had dispatched the man to Newmarket. He felt too, that the lay off was a reflection upon his ability as a plumber. He stated that Howard replied to him that there was nothing he the complainant could do about it. The complainant, although indicating that he had no complaint against the company, nevertheless, felt that Howard could have acted on his behalf and not done so. The complainant was not clear as to what it was that he expected Howard to do for him.

8. There was a considerable amount of uncontested evidence to the Board with respect to hiring practices of the union and to the provisions of the collective agreement referred to above. Having considered all the evidence adduced at the hearing it is abundantly

clear, and the Board so finds that there are sound and reasonable grounds which give ample support to Howard's answer to the complainant that there was nothing that he or the complainant could do either to reverse the lay off or substitute complainant for any other employee who may have been transferred to other Comstock job. It has already been noted above that if the complainant was seeking redress against the company, and this does not appear to be the case, he had allowed the time limits to expire. The evidence is also clear that the respondent followed its customary practice with respect to lay off, and job references in so far as the complainant is concerned. The latter is now, employed on a job to which he was dispatched by the union.

9. The mere fact that the complainant feels that the lay off reflected upon his ability as a tradesman or resulted in loss of wages are not legitimate grounds upon which the respondent might alter the normal procedures on lay off, (to which all members of the respondent are subject) for the individual satisfaction of the complainant. A step which, upon the evidence, the complainant seeks to bring about.

10. The Board accordingly finds and declares that the respondents have not acted in a manner that is arbitrary, discriminatory, or in bad faith in dealing with the complainant. The complaint is accordingly dismissed.

5395-73-R: Canadian Union of Public Employees (Applicant) v. THE ELGIN COUNTY BOARD OF EDUCATION (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members D. B. Archer and J. D. Bell.

APPEARANCES AT THE HEARING: W. A. Acton and P. Senay for the applicant; R. C. Filion and I. A. McKague for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER D. B. ARCHER: September 23, 1974.

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2. Pursuant to the decision of the Board dated June 14, 1974, the Board directed the taking of a representation vote in this matter. That vote was conducted on June 26 and of the 68 persons who cast ballots, 52 were marked in favour of the applicant while 11 were marked against the applicant. In addition, and pursuant to the Board's initial instructions, five persons, each classified by the respondent as "school office manager" had cast segregated ballots. The duties and responsibilities of these persons were the subject of an Examiner's inquiry which culminated in the report of the Examiner herein dated

July 12, 1974. On September 17, 1974, the Board entertained the representations of the parties with respect to the conclusions that should be drawn from the said report.

3. It is the submission of the respondent that the conclusion which the Board should draw in view of the evidence contained in the said report of the Examiner is that those classified by the Respondent as "school office managers" exercise managerial functions or are employed in the confidential capacity in matters relating to labour relations and are therefore not employees within the meaning of section 1(3)(b) of the Labour Relations Act. The applicant has adopted the opposite position. It was agreed that the evidence as adduced by Noreen Pilkington will be representative of the duties and responsibilities of the five persons concerned.

4. Having carefully reviewed the evidence as contained in the said report of the Examiner, we find that the essential facts insofar as they relate to Mrs. Pilkington's alleged managerial functions as disclosed therein bear a marked similarity to those as outlined in the majority decision and the dissent in The Lakehead Board of Education case OLRB M.R. February 1970 at page 1331. Having regard to the principles and authorities as set out therein, we accordingly find that she does not exercise managerial functions within the meaning of section 1(3)(b) of the Act.

5. As regards the confidential aspects of Mrs. Pilkington's job, counsel for the respondent laid great stress upon the fact that she was responsible for typing teacher evaluation reports and that therefore she has access to confidential information relating to labour relations. However, even if the Board should accept this conclusion, we are not satisfied that such exposure in all of these particular circumstances warrants our finding that she was "employed" in a confidential capacity in matters relating to labour relations. (In this regard, see the Metropolitan Separate School Board Case (1974) OLRB M.R. 220 and the Toledo Scale, Division of Reliance Electric Limited case (Board File No. 5462-74-M)).

6. In the result, we find that Mrs. Noreen Pilkington, Mrs. R. Atkinson, Mrs. Shirley Blaxall, Miss Eileen Judd and Mrs. Doris Gilkes are included in the bargaining unit as defined in the decision of the Board in this matter dated June 14, 1974.

. . .

8. A certificate will issue to the applicant.

. . .

DECISION OF BOARD MEMBER J. D. BELL: September 23, 1974.

I disagree with the inclusion of the school office manager in the bargaining unit. The five individuals concerned are in charge of the clerical staff of their respective schools and in such capacity their duties and responsibilities require them to exercise managerial functions and/or be employed in a confidential capacity in matters pertaining to labour relations.

I find that they are not employees within the meaning of section 1(3)(b) of The Labour Relations Act.

5723-74-R: International Union of United Plant Guard Workers of America - Local 1962 (Applicant) v. THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO (Respondent) v. Service Employees Union Local 204 (Intervener).

BEFORE: Frank V. Boscarriol, Vice-Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

DECISION OF THE BOARD: September 25, 1974.

1. By letter dated September 13, 1974, the applicant pursuant to the provisions of Section 17 of The Statutory Powers Procedure Act requests that the Board provide written reasons for its decision dated September 10, 1974, wherein its application requesting the taking of a pre-hearing representation vote was dismissed.

2. It is not disputed that the employees covered by this application were originally included in a bargaining unit as defined in a certificate of the Board issued to the intervener trade union on November 16, 1949 and that up to October 21, 1972, these employees were each classified by the respondent as "Watchman". However, effective October 21, 1972, this classification was changed to "Building Patrol." Although the report of the Examiner herein dated July 22, 1974, fails to disclose the reasons underlying this change in job title, it is manifestly clear that there was no change in job function.

3. It is the intervener's submission that the employees sought by the applicant are currently covered under a collective agreement entered into between the intervener and the respondent. It is clear that the respondent, in the recognition clause of that agreement specifically acknowledged the intervener as the sole and exclusive bargaining agent for all of its employees in certain named classifications including those in the job classifications of Building Patrol Numbers 1, 2 and 3. The applicant nevertheless, maintained that these Building Patrolmen are guards within the meaning of section 11 of The Labour Relations Act and in the light of this background the Board was asked to rule upon the issue.

4. It is clear, having regard to the Board's jurisprudence as contained in the cases cited in our previous decision dated September 10, 1974, that the justification for treating security guards separate and apart from other employees is the actual and potential conflict of interest between their duties as a security guard and their loyalties to their fellow employees. In this regard, the Board has deemed it appropriate to include in the same bargaining unit employees who virtually have no monitorial or admonitory authority over the remaining employees in the unit and whose duties consist primarily of watching, warning and reporting.

5. The evidence in the instant case establishes to our satisfaction that Saulnier's duties in relation to his assigned building on the campus are not those generally performed by the university security police. When faced with any unusual problems relating to emergency and security, it is clear that he would normally refer such matters to the attention of the security police. He is not a Special Constable under the Police Act nor is he licensed under the Private Investigation and Security Guards Act. He plays no role in the enforcement of any university rules and regulations. He has no specific authority to search persons or to eject trespassers. He is not responsible for checking in or checking out the employees engaged at the building and he refers unauthorized personnel to the security police in the event they seek admission to the building during times other than their normal working hours. His only power of discipline in relation to employees engaged in the building is to advise them to stop doing anything which may cause damage or fire. In all of the circumstances, we are satisfied that his monitorial or admonitory authority over the remainder of the employees in the bargaining unit, is relatively insignificant and that his duties in this respect do not transcend those of merely protecting the property of his employer.

6. No instances were cited to us which would indicate that an actual conflict of interest has in fact developed between the employees in question and the remainder of the employees as encompassed in this unit during the lengthy period of time during which the intervener represented the employees in the said bargaining unit and we so find. Further, having regard to the factors as outlined in Paragraph #5 herein, we are likewise satisfied that no potential conflict of interest exists.

7. In these circumstances therefore we have no hesitation in confirming the conclusions reached in the decision of the Board in this matter dated September 10, 1974.

6105-74-U: Nikos Kotinopoulos (Complainant) v. THE BECKER MILK COMPANY LIMITED (Respondent).

- and -

6106-74-U: Abe Hajjar (Complainant) v. THE BECKER MILK COMPANY LIMITED (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members J.D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: W.G. Charlton for the complainants; Alan J. Lenczner for the respondent.

DECISION OF G.W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES WITH BOARD MEMBER, J.D. BELL DISSENTING IN PART: September 19, 1974.

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2. Although each of the complainants filed a separate complaint in these matters, for the purpose of disposing of a preliminary objection common to both complaints the Board will consolidate the complaints. Its reasoning therefore applies to both matters.

3. Each of the complaints was brought under section 79 of The Labour Relations Act alleging a violation of section 58, subsections (a) and (c). The nature of the alleged offence as set out in the respective complaints read:

1) (Re: Nikos Kotinopoulos)

"On or about January 3rd, 1974 the grievor was dealt with by Harold Keene, Manager of Store Operations of the Respondent contrary to the provisions of section 58, subsections a and c of The Labour Relations Act in that he did on his own behalf or on behalf of the respondent: Discharge the grievor contrary to Section 58 Subsections a and c of the Act, in that this Discharge was a consequence of the grievor's having engaged in organizing employees of the respondent."

2) (Re: Abe Hajjar)

"On or about March 27th, 1972 the grievor was dealt with by Stan Brown, Area Supervisor for the Respondent contrary to the provisions of section 58 Subsection a and c of The Labour Relations Act in that he did on his own behalf

or on behalf of the respondent: The said Stan Brown met the complainant at the complainant's store on the morning of the 27th of March, 1972; advised the complainant he was fired for being involved in organizing an association of employees; which discharge was contrary to Section 58, Subsections a and c."

4. At the hearing and in the replies to the complaints the respondent raised a preliminary objection to the Board's jurisdiction. In this regard, the respondent's reply to each of the complaints reads:

1. This complaint has been decided and reviewed by The Ontario Labour Relations Board in file No. 4972-72-U and 4971-73-U and is res judicata.
2. In the alternative, the Respondent denies the allegations contained in the complaint and puts the Complainant to the strict proof thereof.

5. The Board seldom entertains only the preliminary objection in a case such as this in that a practice of doing so would elongate proceedings before the Board, as well as increase the expense of having the Board resolve disputes. However, where the parties consent to the bifurcation of proceedings or where the proceedings cannot, without prejudice to one of the parties, commence until certain preliminary points are resolved (as was the case in Ward Shellington et al and Imperial Tobacco et al, Board File No. 5470-74-U) the Board will dispose of such matters before proceeding to the merits. Therefore, having regard to the agreement of the parties, the Board limited the initial hearing to argument on the preliminary issues raised by the respondent.

6. Counsel for the respondent submitted that this Board had no jurisdiction to hear these complaints because of, as he put it, the operation of law. It was his contention that these precise complaints were filed with the Board on January 4, 1974, and that by virtue of a hearing held on March 21, 1974, the complainants had been dismissed. The Board's decision dated March 21, 1974 arising out of that March 21, 1974 hearing reads:

Counsel for the complainant requested an adjournment. For the reasons given orally at the hearing, this request was denied. The complainant then elected not to proceed and accordingly this application is dismissed.

Counsel noted further that the Board was requested to reconsider its decision of March 21, 1974, and that this request was denied by way of a decision dated May 27, 1974. That decision reads, in part:

At the hearing of this application on March 21, 1974, counsel for the applicant was given every opportunity to make representations regarding an adjournment and, in fact, utilized that opportunity. Having fully considered the representations of counsel, the Board denied the request for an adjournment for reasons given orally at the hearing and alluded to in its decision.

Counsel for the complainant has not submitted any new representations that were not already heard and considered by the Board at the hearing of this matter on March 21st, 1974. The Board accordingly sees no reason to vary or revoke its decision of March 21st, 1974.

7. The respondent therefore submitted that because of these earlier proceedings the Board was estopped from reconsidering the instant applications albeit in the form of fresh complaints. It was argued that the complainants had the opportunity to lead evidence at the March 21, 1974 hearing and in failing to do so were now prevented from reinstituting proceedings before the Board. The legal doctrine of res judicata was therefore relied upon and Humphries v. Humphries, [1910] 1 K.B. 796 at p. 800; Halsbury's Laws of England 3rd ed. Vol. 15 at paras. 316. 349; Re South Essex Estuary Co. ex parte Chorley (1870) L.R. 11 and Re South American and Mexican Company, ex parte Bank of England, [1895] 1 Ch. 37, were relied upon. Finally, as an alternative argument apparently, counsel to the respondent submitted that because these complaints were nothing more than an attempt to obtain a second reconsideration by the Board, the Board's admitted power to reconsider, in these circumstances, ought not to be exercised.

8. Counsel to the complainants admitted that circumstances surrounding the two sets of complaints were identical but he denied that the doctrine of res judicata had any application. He submitted that the doctrine of res judicata referred to the proposition that a judgment on the merits of a matter between parties was dispositive of those merits between those parties in subsequent proceedings. In the case before the Board on March 21, 1974, the complainant was Beckers Milk Retail Store Employees Union not Mr. Hajjan or Mr. Kotinopoulos. More importantly, the decisions of the Board dated March 21, 1974 and May

27, 1974 were not judgments on the merits of the applications. Rather, they constituted a mere dismissal of the complaints in that a request for an adjournment by the complainant, in order to give counsel time to prepare, was denied, and the matters were dismissed when the complainant then decided not to proceed. In support of his argument he referred the Board to Spencer-Bower and Turner, On Estoppel, 2nd ed. 1969, page 51.

9. Counsel to the respondent, in reply to these arguments, submitted that although the complainant in the earlier proceedings was Beckers Milk Retail Store Employees Union, there was no doubt that the complaints were being brought on behalf of the complainants now before the Board. Furthermore, had the respondent objected to the Beckers Milk Retail Store Employees Union bringing the complaints, he suggested that the Board would have amended the complaints, at the hearing, to describe Mr. Hajjar and Mr. Kotinopoulos personally. In this regard he suggested, first, that the wording of section 79 of the Act only gives relief to individuals (not trade unions) and therefore the earlier complaints clearly were identical; and secondly, section 93 of the Act gives the Board power to correct a bona fide mistake in the matter of the proper person to any proceedings before the Board - a power the Board would have used if requested.

10. For a starting point we can begin with the description accorded to estoppel by matter of record or res judicata by the Canadian Encyclopedic Digest 2nd ed., 1952, vol. 6, para 41, page 580:

"No Court shall try any suit or issue, in which the matter, directly and substantially in issue(t), has been directly and substantially in issue in a former suit between the same parties(u), or between parties under whom they claim, litigating under the same title, in a Court of jurisdiction competent(v) to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided(w) by such Court(x). If in any Court of competent jurisdiction a decision is reached, a party is estopped from questioning it in a new legal proceeding. The principle also extends to any point, whether of assumption or admission, which was in substance the ratio of, and fundamental to, the decision(y). Res judicata applies not only to points upon which the Court was actually required by the parties

to form and pronounce an opinion, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence might have brought forward at the time(z)."

From the definition it can be seen that the doctrine requires the same parties, the same issues, a final judgment and a court (a body of record). The principal Labour Board case to consider the implications of these requirements in an administrative law setting is United Steelworkers of America and Wright Assemblies Limited 61 CLLC ¶16,215. In that case it was held that the Board's earlier decision refusing a consent to prosecute brought by the trade union in and on its own behalf did not raise the principle of res judicata in a latter application by the trade union under section 65 (now section 79) arising out of the same circumstances, but where the trade union was, in substance, an agent for and on behalf of the aggrieved employees. Moreover the Board ruled that in denying its consent to prosecute it had not made a final decision on the merits of the issues and facts raised in the complaint under section 65. (It should also be noted that the Board questioned whether it was a court of record, and we might add that even though The Statutory Powers Procedure Act, 1971 S.O. 1971, c. 47, s. 20, may have resolved this issue, as a matter of law, it is dubious that res judicata applies to a tribunal that has wide reconsideration powers. However, for the purposes of this decision we are prepared to assume that it does and that it is a useful policy for the Board to consider, in any event.) In other words, in Wright Assemblies Limited, supra, the Board ruled that the parties in the two proceedings were not the same and that the original proceedings did not involve a judgment by the Board on the merits of the matter that subsequently came before it. The Board's reasoning on this latter point is of substantial importance to this case and is therefore well worth reproducing.

"It is an indispensable condition, however, to the success of the plea of res judicata that the earlier proceeding, involving the same issues, questions or facts, resulted in a judgment on the merits. For instance, it has been held that the dismissal of a previous action, for want of prosecution, or failure to comply with an order for security for costs, defects in pleadings, or prematurity, does not bar a subsequent suit involving the same issues and facts. In these instances the Courts have not treated the dismissal as a final adjudication on the merits. (See Mayzel v. Sturm [1957] 240; McCowan v. Menosco Manufacturing Company

[1941] O.W.N. 133; Talosnok v. Talosnok
 [1957] O.W.N. 309; Re Doty & Marks 57 O.L.R.
 623 (C.A.) Barber v. McCuaig (1900) 31 O.R.,
 593 Phipson *ibid.* p. 423.) Further,

...a judgment in favour of a defendant is not always as decisive in his favour on the points in issue as a judgment for a plaintiff would be, despite the fact that it is equally conclusive of the claim brought. Where a plaintiff recovers judgment, it almost necessarily follows that all issues raised by the defendant have been determined in the plaintiff's favour; there must at least have been a decision on the merits. On the other hand, a judgment may have passed in favour of the defendant on dilatory grounds, or on one only of many alternative defences; and circumstances may have arisen entitling the plaintiff to judgment which were not in existence when the first action was brought. The burden is on the defendant to show that the judgment relied on was obtained on grounds, or in circumstances, which afford him a defence to the subsequent action. (Halsbury's Laws of England, 3rd ed. Vol. 15. p. 202).

It is true that a judgment dismissing the plaintiff has the same effect as a judgment upon the merits. (Armour v. Bate, [1891] 2 Q.B. 233, -) but in the case of such a judgment, as in the case of a judgment by consent, it does not follow necessarily that an estoppel by res judicata has been created. Upon the question being raised it is the duty of the Court to look into the proceeding, and to ascertain definitely what matters were in fact decided by the judgment in the previous action. (Spencer Bower on Res Judicata, p. 24.)"

11. Therefore even if we found that the parties in the two proceedings relevant to this case are the same (and the Wright Assemblies Limited case would appear to stand for this proposition as well) an earlier dismissal of a matter before the Board without a consideration of the merits cannot raise the principle of res judicata. Not only does the quotation from Wright Assemblies Limited case indicate this, but the Board has found

ample authority elsewhere for the same proposition in both the civil and criminal contexts. In this regard the Board would direct the respondent's attention to McIntosh v. Parent (1924) 55 OLR 552; Re Doty and Marks (1925) 57 OLR 623 at 625; Lundy v. Patrick Construction Co. (1952) 6 W.W.R. (N.S.) 564 (Sask) where it was held that res judicata does not apply when an application has been dismissed for a defect in procedure and, R v. Commodore Hotel (Windsor) Ltd. [1955] OWN 451, 111 CCC 165, where a certificate of dismissal, issued after a summary conviction court dismissed a matter for non-attendance of the prosecutor, was not a bar to a latter proceeding. Dismissals in such circumstances do not deal with the merits of the case and are not the kind of situations to which the ratio of Henderson v. Henderson 67 E.R. 313 (cited in Wright Assemblies Limited, referred to in Halsbury and relied upon by the respondent) is directed at. While the Henderson ratio broadens res judicata to embrace other matters "which might have been brought forward as part of the subject context", that decision presupposes that there exists a judgment on the merits at least to the extent that they were argued by the parties at the original hearing. In the earlier case, arising out of the circumstances now supporting the instant complaints, argument on the merits did not occur and the decision of the Board makes no reference to the merits of the complaints.

12. But this is not to say the Board is powerless to prevent a party from bringing a series of complaints that for one reason or another never result in a decision on the merits and thereby harassing an opponent. As cases such as Greenhalgh v. Malland, [1947] 2 All E.R. 255 and Wright v. Bennett et al., [1948] 1 All E.R. 227 at p. 230 (these cases are discussed in the grievance arbitration context in Re Office and Professional Employees Union, Local 343 and United Steelworkers (1972) 24 L.A.C. 1, 7 (Weiler)) illustrate the court's power to prevent an abuse of its own process in such circumstances, surely the Ontario Labour Relations Board could take a similar stance in the exercise of its broad discretion under section 79 of the Act. However, we do not believe there has been such an abuse of process in these circumstances for this discretion to be exercised. One instance of being unable or unwilling to proceed in no way represents an abuse of process. (See Regina v. Canadian Labour Relations Board, ex parte Jessiman Brothers Cartage Ltd. (1971) 18 D.L.R. (3rd) 226 at 230; Note, The Permissible Scope of The National Labour Relations Rule Against Relitigation (1970-71) 69 Mich. L. Rev. 569.)

13. Therefore, while res judicata is a principle raised by a default judgment (as indicated by Re South Essex Estuary Co. ex parte Chorley, *supra*,) it is not relevant to the outright dismissal of a matter which is not attended by judicial consideration of the merits of that matter. (We note that even in the default judgment context at least one learned commentator has cautioned the narrow application of the dictum of Wigram, V.C. in Henderson v. Henderson, *supra*, see Cross, Evidence 3rd ed. 1967, p. 274.)

14. All that can be said in the instant matter is that the Beckers Milk Retail Store Employees Union on behalf of Mr. Kotinopoulos and Mr. Hajjar filed two complaints against the respondent on January 4, 1974, and that at the hearing of the matter, after having only retained counsel the night before and the Board having refused that counsel's request for an adjournment to allow him to prepare, the complainants elected not to proceed and their complaints were dismissed. The Board refused to reconsider its decision not to grant an adjournment and thereby affirmed its decision to dismiss the cases. This therefore, forced the complainants to launch fresh complaints with the Board and these complaints are now before this panel. There has been no abuse of process, the principle of res judicata is inapplicable and the Board is now prepared to hear the substance of these complaints. The Registrar is therefore directed to set a date for the next hearing in these matters and to so notify the respective parties.

DECISION OF BOARD MEMBER J.D. BELL: September 19, 1974.

1. I am generally in agreement with the decision of the majority of the Board. However I must emphasize that in the past the Board has been strict in refusing adjournments unless agreed to by all parties concerned.

2. It becomes apparent that, if this principle is followed in the future, one need only request an adjournment, be refused, have the matter dismissed by the Board, and then make a new application.

3. Therefore in the event that the complainants are successful in this second application, no compensation should be paid from and after the date of the first dismissal.

5891-74-R: The Canadian Transportation Workers Union #200, National Council of Canadian Labour (Applicant) v. DRY BULK FORWARDERS LTD. (Respondent) v. Teamsters Local 879 and Teamsters Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervenors).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members F.W. Murray and H. Simon.

APPEARANCES AT THE HEARING: Cyril S. Hoadley and L.J. Labonte for the applicant; Donald J. McKillop, Q.C. and Bill Williamson for the respondent; L.A. McLean and D. Swait for the intervenors; D.L. Brisbin for Laidlaw Transport Limited.

DECISION OF G.W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER F.W. MURRAY: September 25, 1974.

. . .

2. This is an application for certification. The applicant has proposed a bargaining unit comprising of "all the employees of the respondent, working in or out of the Town of Markham, save and except office staff, foremen, persons above the rank of foreman, and employees working less than twenty-four hour's per week".

3. At the outset of the hearing after describing both the nature of the application and the parties thereto, the interveners interrupted the proceedings to identify themselves and to challenge the jurisdiction of the Board, on constitutional grounds, to entertain the application. The Board therefore decided to receive evidence and argument from all parties on the status of the interveners. In fact the Board has a duty to respond to such challenges (see Agence Maritime Inc. v. Canada Labour Relations Board et al 68 CLLC ¶14,080; Northern Electric Co. Ltd. v. LRB (Ont), Communications Workers of America, AFL, CIO and CLC, Northern Electric Employees Association and United Steelworkers of America, 70 CLLC 14,016; Regina v. Canada Labour Relations Board, ex parte Jessiman Brothers Cartage Ltd., (1971) 18 D.L.R. (3d) 226). But more will be said of this duty later in the light of the interveners' submissions to the Board.

4. There was some objection to this procedure voiced by counsel to the respondent company; however the Board is master of its own procedure and it makes little sense to ignore a challenge similar to that of interveners', forcing them to go to the courts to get relief. Such a response can only look oppressive. Moreover the nature of the respondent's operations is best developed by way of viva voce evidence before the Board than by way of an affidavit before a court on an application for judicial review.

5. It was the interveners' submission that the respondent corporation had been set up to defeat an existing application for certification before the Canada Labour Relations Board. More specifically, the interveners alleged that Dry Bulk Forwarders Ltd. was incorporated on May 13, 1974, to appear to take over that part of the operation of B. Williamson Trucking and Leasing Company Limited (hereinafter referred to as "B. Williamson") and Laidlaw Transport Limited (hereinafter referred to as "Laidlaw") at Richmond Hill, as a subterfuge company to defeat or undermine a pending application for certification by the intervener unions before the Canada Labour Relations Board. It is submitted that consequent upon the incorporation of the subterfuge company and as part of an anti-union campaign conducted by these companies, work was taken from all of the employees of these companies who were suspected of supporting or favouring the Teamsters and others and given to a favoured few loyal employees who were, in the main, ex-Laidlaw Company dispatchers.

6. The interveners adduced sufficient evidence to establish the following scenario of facts. First, on or about March 1, 1974, the interveners applied to the Canada Labour Relations Board for certification

for a bargaining unit of the employees of B. Williamson described as follows:

All employees of the respondent working at and out of St. Catharines and Richmond Hill, Ontario classified as drivers, checkers, maintenance men and mechanics excluding foremen, dispatchers, those above the rank of foreman, dispatcher, safety coordinator, office, sales staff and part time employees.

Towards the end of May the Canada Labour Relations Board held a hearing in the matter and on May 28, 1974 by telex, informed the parties that the proposed unit was appropriate and ordered a representation vote by mail. The ballots were sent from Ottawa on May 31st, 1974 to each voter and returnable at 11:00 a.m. June 17, 1974 at the latest. Also, the same trade unions on March 7, 1974, applied for an identical bargaining unit of employees of Laidlaw. Second, by letter from Mr. D.J. McKillop, Q.C., counsel to B. Williamson, the Board was asked to set aside the vote because of certain alleged irregularities in the Board's procedures. This application for review was heard by the Canada Labour Relations Board in late July and it reserved its decision in the matter. Third, in a complaint dated March 15, 1974 by the interveners against both Laidlaw and B. Williamson, it was alleged that those companies, through lay offs, threats and promises, had engaged in a course of conduct designed and calculated to discharge and alter membership in the intervener trade unions. The complainants not only asked for specific relief to remedy these alleged violations but further reiterated that the undertakings and businesses of B. Williamson and Laidlaw were mutually integrated and under the common control and direction of Michael DeGroot. Accordingly, the complainants asked the Canada Labour Relations Board to declare these two employers as a single employer in a single federal work pursuant to section 133 of the Code.

7. Fourth, another complaint dated April 16, 1974 was filed against B. Williamson and Laidlaw reiterating the details set out in the first complaint but further alleging the lay off of additional employees to discourage the organizational efforts of the interveners.

8. Fifth, the interveners filed a third complaint with the Canada Labour Relations Board. This complaint was against Dry Bulk Forwarders Limited (hereinafter referred to as "Dry Bulk"), the respondent company before this Board, as well as Laidlaw and B. Williamson, and it is in this complaint that the interveners alleged that Dry Bulk was incorporated on or about May 13, 1974 by Laidlaw and B. Williamson for the purpose of appearing to take over part of the operation of B. Williamson at Richmond Hill as a subterfuge company to defeat the pending applications for certification of the interveners. Furthermore, the interveners submitted

that the businesses and undertakings of Dry Bulk, Laidlaw and B. Williamson were mutually integrated and under the common control and direction of Laidlaw and B. Williamson. Therefore, by a separate application dated July 26, 1974, the interveners filed a separate application with the Canada Labour Relations Board for a declaration to this effect under section 133.

9. Some other procedural details arising out of these matters were also drawn to the attention of this Board but they have no consequence to matters before us and so will not be commented upon.

10. Having therefore established that this respondent company is before the Canada Labour Relations Board and that that Board will soon determine its relationship to the two other corporations that are admittedly within the jurisdiction of the Canada Labour Code, counsel to the interveners asked this Board to defer to the proceedings before the Canada Labour Relations Board. Elaborating, he argued that the Canada Labour Relations Board was the most convenient forum to resolve all of the foregoing allegations and that as a matter of "comity" between administrative agencies of different jurisdictions this Board should refuse to entertain the request for certification now before it. It was submitted that this deference could be for a "reasonable" period of time and that if after such time the Canada Labour Relations Board had not disposed of the proceedings before it, this Board should then entertain the application. Counsel to the respondent argued that such deference would be tantamount to a declination of jurisdiction and therefore contrary to law. However, it is of note that neither counsel submitted any authority for the propositions that they supported.

11. First, the Board finds that the interveners, by virtue of their relationship with the respondent company before the Canada Labour Relations Board, have sufficient status to cause the Board to consider this motion or request. In fact, because a court may be obligated to entertain all challenges alleging a clear excess of jurisdiction by an inferior tribunal (a situation that would prevail if an administrative tribunal ignored the constitutional law requirements in a particular fact situation), this Board should be very cautious in denying someone status to raise a constitutional law objection to its jurisdiction to proceed further in a matter; (see the discussion on status of McRuer, C.J.H.C. in Regina v. Ontario Labour Relations Board, ex parte Dunn (1963), 39 D.L.R. (2d) 346 at 353; see also Northern Electric v. LRB (Ont.), Communications Workers of America, AFL, CIO AND CLC, Northern Electric Employees Association and United Steelworkers of America 70 CLLC ¶ 14,016 at p. 14,180 (Ont. S.C.)).

12. Second, as indicated earlier, whenever the Board's jurisdiction is objected to on constitutional law grounds by a party with

status the Board has a duty to respond to the objection. Would the Board be complying with this duty by deferring to some other agency's interpretation of both the facts before it and the constitutional law principles that prevail in this area of labour relations? We think not.

13. This tribunal has to start with the broad proposition "that prima facie labour relations are matters of property and civil rights within the Provinces and are within the competence of the Legislations of the Provinces, coming as they do within section 92 of the British North American Act"; (see Regina v. Ontario Labour Relations Board, ex parte Dunn, *supra*, p. 356; Northern Electric v. LRB (Ont.), Communications Workers of America et al, *supra*, p. 14,180). Hence when an applicant comes before us we must presume that the application is constitutionally sound unless this prima facie presumption is rebutted by a party contending otherwise.

14. The next broad proposition, which is tied to our duty to respond to jurisdictional challenges, is that an administrative tribunal in one jurisdiction is not bound by any determination of a similar tribunal in another jurisdiction. The fact that one tribunal has found that it has jurisdiction over particular parties and even granted a certificate in this regard, is no justification for another tribunal refusing to entertain an application before it; (see Agence Maritime Inc. v. Canada Labour Relations Board et al 68 CLLC ¶14,080 (Que. Sup. Ct.); Northern Electric v. LRB (Ont.), Communications Workers of America et al, *supra*). In fact, when the Canada Labour Relations Board was faced with a similar request it declined the invitation to defer to another tribunal; (see General Truck Drivers' Union, Local 879 v. Buffalo and Fort Erie Public Bridge Authority 68 CLLC ¶16,035 at p. 1,043).

15. Therefore we believe that these two broad propositions seriously question, if not preclude, this Board's authority to defer to some other administrative agency to determine the constitutional law status of the parties now before it, and for these reasons we deny the interveners' request. In doing so we admit that conflict may arise on these issues between the decisions of the labour boards of the various jurisdictions in Canada, but this conflict will be, and has been, resolved by the courts. The courts are the great equalizers in the application of constitutional law principles, but neither they nor the parties should be denied the viewpoints of the inferior tribunals - viewpoints based upon the viva voce evidence that comes before them. Only in this way can the courts meaningfully access the facts upon which the constitutional law principles must be applied; (see Regina v. Canada Labour Relations Board, ex parte Jessiman Brothers Cartage Ltd., *supra*, p. 232). But once having responded to the jurisdictional challenge and having determined that it has jurisdiction, the administrative tribunal can then proceed with the merits of the matter before it.

Any aggrieved party can proceed to the courts to seek relief. In other words, the proceedings before the tribunal need not be stayed; (see Cedarvale Tree Services Ltd. v. Labourers' International Union of North America, Local 183, 71 CLLC 14,087 and Northern Electric v. LRB (Ont.), Communications Workers of America et al, supra).

16. The Board therefore asked counsel to the interveners to proceed with the constitutional law objection to its jurisdiction. It was made clear that this Board was not interested in the details of any alleged scheme to defeat the provisions of the Canada Labour Code except as such evidence would go to establish the interprovincial nature of the respondent's business.

17. This clarification was needed because, as an alternative to the initial request that this Board defer to the Canada Labour Relations Board, the interveners requested a declaration pursuant to section 1(4) of The Labour Relations Act that Dry Bulk is one and the same employer as the two corporate entities now involved in the above described proceedings before the Canada Labour Relations Board. In making this request, counsel to the interveners forewarned the Board that a great deal of emphasis would be placed upon details supporting the allegations that Dry Bulk is a "sham or subterfuge" corporation created to circumvent the Canada Labour Code.

18. We therefore become concerned that the interveners were more interested in the alleged "scheme" to defeat the Canada Labour Code than in the inter or intraprovincial nature of the respondent's business. Furthermore, we questioned the need to resort to section 1(4) of the Act at all in resolving this constitutional law challenge to the Board's jurisdiction. In determining whether a business is interprovincial or intraprovincial the existence of separate legal entities is not determinative; (see Reference re Validity of Industrial Relations and Disputes Investigation Act (Can.) and Applicability in Respect of Certain Employees of Eastern Canada Stevedoring Co. Ltd. [1955] S.C.R. 529 at 536; Re Northern Electric Co. Ltd. and United Steelworkers of America, Local 8001 (1972) 25 D.L.R. (2d) 368 (Que. C.A.); Northern Electric v. LRB (Ont.), Communication Workers of America et al, supra; Regina v. Manitoba Labour Board, ex parte Invictus Limited 68 CLLC 14,066 (Man. Q.B.)). Rather if it is alleged that one company is interprovincial in nature because of its relationship with another corporation that is admittedly within the federal jurisdiction, the question becomes "Does the former corporation form an integral and necessarily incidental part of the latter?" (See Northern Electric v. LRB (Ont.), Communications Workers of America et al, supra, p. 14,185; and see also McNairn Transportation, Communication and the Constitution, The Scope of Federal Jurisdiction (1969), 47 C.B.R. 355 at 378). And it is in answering this question that the alleged subterfuge nature of the respondent corporation may become relevant. In other words, a subterfuge

company in this case and in the constitutional law sense, would be a company that is "in pith and substance" interprovincial. This position is amply supported by Winner and Atty. Gen. of Ont. v. S.M.T. (Eastern) Ltd. (1954) 13 W.W.R. (N.S.) 657, (1954) A.C. 541 wherein Lord Porter had the following to say:

"In coming to this conclusion their Lordships must not be supposed to lend any countenance to the suggestion that a carrier who is substantially an internal carrier can put himself outside provincial jurisdiction by starting his activities a few miles over the border. Such a subterfuge would not avail him. The question is whether in truth and in fact there is an internal activity prolonged over the border in order to enable the owner to evade provincial jurisdiction or whether in pith and substance it is interprovincial. Just as the question whether there is an interconnecting undertaking is one depending on all the circumstances of the case, so the question whether it is a camouflaged local undertaking masquerading as an interconnecting one must also depend on the facts of each case and on a determination of what is the pith and substance of an Act or regulation."

19. Faced with this position of the Board, the interveners decided to withdraw.
20. Accordingly at the hearing the Board proceeded with this application in the normal way.
21. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
22. Having regard to the agreement of the parties, the Board further finds that all employees of the respondent, working in or out of the Township of Markham, save and except office staff, foremen, persons above the rank of foreman and persons regularly employed for not more than twenty-four hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.
23. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on August 6, 1974, the terminal date fixed for

this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

24. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

25. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

26. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER HARRY SIMON: September 25, 1974.

I dissent.

1. This is not a simple case of jurisdiction between this Board and The Canada Labour Relations Board. There are some very serious charges pending before The Canada Labour Relations Board made by the intervener against the respondent company as well as the Williamson and Laidlaw companies which are well outlined in the body of the majority decision.

2. The intervener has applied to The Canada Labour Relations Board under section 133 of the Act for a Declaration that the Respondent Company Dry Bulk Forwarders Ltd. is a single employer with B. Williamson Trucking and Leasing Ltd. and Laidlaw Transport Limited.

3. The parties are in agreement that the Williamson and Laidlaw companies do come under the constitutional jurisdiction of The Canada Labour Relations Board. It is therefore my opinion that the Canada Labour Relations Board is in a better position to determine this case having the admitted jurisdiction over two of the companies involved.

4. It is my further opinion that this Board should have acceded to the submission of the intervener and deferred consideration of this application pending the outcome of the applications and complaints before the Canada Labour Relations Board. This would by no means have meant the abandonment of this Board's jurisdiction.

5. The Ontario Board has on a previous occasion deferred its decision in an application for certification before it pending the outcome of an application for certification by the same applicant

union to the Canada Labour Relations Board. (see; OLRB File No. 17447-69-R, Division 107, Amalgamated Transit Union, Hamilton, Ontario v. Charterways Co. Ltd.) The Board consisting of J. D. O'Shea, Q.C., Vice-Chairman and O. Hodges and H. F. Irwin, members, stated:

"While this Board is not bound by the decision of the Canada Labour Relations Board with respect to its jurisdiction, it may well be that a decision by the Canada Labour Relations Board will satisfy the applicant in this matter and will obviate the necessity of the respondent incurring further expense and time which would be involved in proceeding with the application before this Board."

6. The Board did not make inquiries into its own jurisdiction in this case which under the circumstances it had an obligation to do. For all of the above reasons I would have deferred a decision in this case pending the outcome of the decision of the Canada Labour Relations Board.

4880-73-R: Canadian Textile & Chemical Union (Applicant) v. DOROTHEA KNITTING MILLS LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: K. Rowley and L. Ritchie for the applicant; E. L. Stringer, Q.C., and B. Borsook for the respondent; no one appearing for the objectors.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE: September 26, 1974.

1. Pursuant to the decision of the Board dated June 10, 1974, the Board directed the taking of a new representation vote in this matter. This vote was conducted on July 11, 1974 wherein 66 employees marked their ballots in favour of the applicant while 82 employees marked their ballots against the applicant. By letter dated July 18, 1974, the applicant filed charges against the respondent alleging, inter alia, that the vote did not reflect the true desires of the employees under the circumstances.

2. The matter came on for hearing before us on September 3, 1974, at which time counsel for the respondent took the position that the

charges, even if substantiated, were not relevant to these proceedings and that accordingly this application should be dismissed. In the event that the Board should nevertheless see fit to entertain these charges counsel then requested that he be permitted to call as one of his witnesses in defence, Mr. F. Douglas Edwards, a Field Officer in the employ of the Board.

3. Having carefully reviewed the charges as contained in the said letter from the applicant dated July 18, 1974, we are satisfied that the representations as contained therein might very well be relevant to the disposition of this application. Accordingly, we are not prepared in these circumstances to deny to the applicant the opportunity to adduce evidence in this respect.

4. In the light of this finding, it therefore becomes necessary to entertain counsel's argument relating to the compellability of Mr. Edwards to give testimony in these proceedings. Counsel's initial position in this regard is that although Mr. Edwards is a Field Officer of the Ministry of Labour, Section 100(6) of the Act has no application in these circumstances as Mr. Edwards was not acting under the provisions of the Act rather was acting gratuitously upon the request of the applicant.

5. It is not disputed that Mr. Edwards was at all relevant times, acting upon the instructions of the Registrar following a specific written request from the applicant by letter dated June 19, 1974, for Board assistance in settling the lists for the upcoming election. Mr. Edwards thereupon met with the parties in one of the Board's offices on June 27, 1974. It was during the course of this meeting that counsel alleges that he had made certain statements concerning the respondent's position with respect to this application as dictated to Mr. Edwards in the presence of Mr. Rowley, the applicant's representative. It is this evidence that counsel seeks to introduce through Mr. Edwards. When counsel was advised by the Board that the parties had been supplied with copies of Mr. Edward's memorandum at his request outlining the events which transpired at this meeting, counsel indicated that this was not sufficient for his purposes.

6. Having carefully reviewed all of the circumstances of this case, we find that since at all relevant times Mr. Edwards was not acting in his official capacity as Field Officer, it therefore follows that Section 100(6) has no application in these proceedings.

7. However, the provisions of Section 98 would appear relevant to these proceedings and that section provides as follows:

"No member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or

servants shall be required to give testimony in any civil suit respecting information obtained in the discharge of their duties under this Act."

Counsel's position in this regard is that this provision is not applicable in the instant case on the basis that such information given in the presence of the applicant was not obtained in the discharge of Mr. Edward's duties "under the Act" and that in any event his testimony is not required to be given "in any civil suit".

8. We shall deal firstly with counsel's submission that Mr. Edwards was not acting "under the Act." In our opinion there can be no question that although he was not acting in his official capacity as Field Officer, he nevertheless was acting as an officer of the Board with ad hoc duties as assigned to him by the Board through its Registrar. In this regard, the Registrar's correspondence describes him as "one of the Board's examiners." It was in this capacity that his assignment was performed at a time when the Board was advised of the difficulties encountered by the parties in settling the voters' list. If specific statutory authority is required in sustaining our position that at all relevant times Mr. Edwards was in fact acting under the Act, we would refer to the particular power as outlined in Section 92(2)(f) which permits the Board to "enter upon the premises of employers and conduct representation votes during working hours and give such directions in connection with the vote as it considers necessary". (emphasis added). In this connection, we also note the general power of designation granted to the Board pursuant to the provisions of Section 92(2)(g) of the Act. Further, the fact that such information was not necessarily given in a confidential matter, does not change our conclusion in this respect. In our opinion it was not only permissible for the Registrar to have made such an assignment, it was incumbent upon him to have so acted in such an administrative fashion in an attempt to ensure the proper functioning of the Act.

9. As regards counsel's second submission we are satisfied having regard to a review of the relevant authorities that the reference to "any civil suit" as used in the provisions of Section 98 of the Act is not limited to the initiation of proceedings in an ordinary court of law as suggested by counsel, but includes proceedings taken before this statutory tribunal. (In this regard, see the following: Lenoir v. Ritchie (1879) 3 S.C.R. 575 at page 601; The Merak [1965] 1 All E.R. 230 (CA) at pages 238 and 240; Re Public Service Staff Relations Board (1974) 38 D.L.R. 3d 437 (Fed. C.A.) at pages 445 and 446.

10. In the result, the submissions of counsel are rejected and the Registrar is accordingly directed to list this matter for continuation of hearing for the purposes of enabling the Board to entertain the evidence in relation to the charges as filed by the applicant herein.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: September 26, 1974.

I dissent.

Initially I may say that even if the charge contained in the letter of the applicant of July 18th, 1974, was proven, I would not find the circumstances such that either the applicant should be certified, or that a new vote should be ordered.

However, I wish to deal, in any event, with the argument made by counsel for the respondent that Mr. Edwards should be called to give evidence of a statement purportedly dictated to him while he was attempting to assist the parties with their voting arrangements.

The presence of Mr. Edwards at such meeting was as a result of a request by the applicant to the Registrar for assistance in setting up the voting arrangements. His appearance was at the direction of the Registrar rather than at the direction of the Board. This is not in any way to be critical of the Registrar, for in the day to day workings of an administrative tribunal, directions from the Registrar are made to facilitate the administration of the Act and, with few exceptions, there are no repercussions therefrom.

Unfortunately, the present case is one of these exceptions.

The sections of the Act argued before us were sections 100(6) and section 98, which read as follows:

"98. No member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil suit respecting information obtained in the discharge of their duties under this Act."

"100(6) No information or material furnished to or received by a field officer under this Act and no report of a field officer shall be disclosed except to the Board or as authorized by the Board, and no member of the Board and no field officer is a competent or compellable witness in proceedings before a court or other tribunal respecting any such information, material or report."

In my respectful opinion, Mr. Edwards cannot be excused from giving evidence under the provisions of either section in that he was neither acting as a field officer "under this Act" nor was he indeed acting in any function "under this Act". Indeed, his only presence was as a result of a courtesy gesture on the part of the Registrar.

Neither am I comforted in the majority decision by the Rules of Procedure, and Regulations under The Labour Relations Act in that such rules provide, in a general way, for the Registrar only to settle voting arrangements for the parties.

In summary, therefore, I am of the opinion, and would so find, that Mr. Edwards was not acting under this Act and accordingly should not be excused from giving evidence.

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5513-74-JD: Admiral Engineering and Construction Limited (Complainant) v. Local Union 47, Sheet Metal Workers International Association and the United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Respondents). (DIRECTION).

(1974) 2 OLRB M.R. - PAGE 519.

5716-74-JD: Local 527 Labourers' International Union of North America (Complainant) v. Local 71 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (Respondent #1) v. Local 586 of the International Brotherhood of Electrical Workers (Respondent #2) v. Ellis-Don Limited (Respondent #3). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 545.

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

AUGUST

4968-73-M: Canadian Union of Public Employees, and its Local 268 (Applicant) v. F. J. Davey Home for the Aged (Algoma) (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 558.

5160-73-M: United Steelworkers of America (Applicant) v. Independent Fuels & Lumber Ltd. (Respondent). (AFFIRMATIVE).

5931-74-M: London and District Building Service Workers' Union, Local 220 (Applicant) v. The Regional Municipality of Waterloo (Sunnyside Home) (Respondent). (AFFIRMATIVE).

5991-74-M: United Steelworkers of America (Applicant) v. Telso Products Limited (Respondent). (AFFIRMATIVE).

6031-74-M: Toronto Newspaper Guild (Applicant) v. The Globe and Mail Limited (Respondent). (WITHDRAWN).

6091-74-M: United Rubber, Cork, Linoleum and Plastic Workers of America, Local No. 411 (Applicant) v. AOCO Limited (Respondent). (WITHDRAWN).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1322-71-R: The General Contractors' Section of the Toronto Construction Association (Applicant) v. The Carpenters District Council of Toronto and Vicinity on Behalf of Locals 27, 666, 681, 1133, 1747, 1963, 3227,

3233 of the United Brotherhood of Carpenters and Joiners of America (Respondent) v. Heavy Construction Association of Toronto (Intervener).

[Re: The Acoustical Association of Ontario] (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

5429-73-U: Oscar DeGarie (Complainant) v. United Steelworkers of America, Local 6500 (Respondent). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - JURISDICTIONAL

DISPUTE

4057-73-JD: Dufferin Precast Company, A subsidiary of Vibrek Incorporated (Applicant) v. International Association of Bridge Structural and Ornamental Ironworkers, Local Union No. 700 Labourers International Union of North America Locals 625 and 506, and Poole Construction Limited (Respondents). (REQUEST DENIED).

(1974) 2 OLRB M.R. - PAGE 514.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1974

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

No Vote Conducted

4961-73-R: Labourers' International Union of Norther America Local 247 (Applicant) v. Taggart Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (18 employees in the unit).

5438-74-R: International Molders & Allied Workers Union (Applicant) v. Ex-Cell-O Corporation of Canada, Limited (Respondent).

Unit #2: "all employees of the respondent engaged in its Drafting and Engineering Department, save and except supervisors and persons above the rank of supervisor." (12 employees in the unit).

(BARGAINING UNIT #1 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

5617-74-R: Canadian Union of Public Employees (Applicant) v. The Haldimand Board of Education (Respondent).

Unit #1: "all office, clerical and technical employees of the respondent in the Regional Municipality of Haldimand-Norfolk, save and except Confidential Secretary to the Director of Education, Secretary to the Business Administrator and Treasurer, Personnel Payroll Officer, Purchasing Agent and Office Manager, Accountant, and persons above those ranks, students employed during the school vacation period, and persons regularly employed for not more than 24 hours per week." (27 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5752-74-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. McGraw-Hill Ryerson Limited (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, security guards, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (29 employees in the unit).

Unit #2: "all persons regularly employed for not more than 24 hours per week and students employed during the school vacation period by the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and security guards." (10 employees in the unit).

5803-74-R: Canadian Union of Public Employees (Applicant) v. Cobourg District General Hospital Association (Respondent) v. Ontario Physiotherapy Association, a Branch of the Canadian Physiotherapy Association (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Cobourg, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacist, undergraduate pharmacist, graduate dietitians, student dietitians, persons employed by Versafoods Limited in the Hospital, technical personnel, supervisors, persons above the rank of supervisor, chief engineer, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (130 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES

PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

5900-74-R: Labourers' International Union of North America, Local 607 (Applicant) v. Taro Properties Incorporated (Respondent) v. Lumber and Sawmill Workers Union, Local 2693 (Intervener).

Unit: "all construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (HAVING REGARD TO THE EVIDENCE BEFORE IT AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FOUND THAT THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND RESPONDENT IS NOT A BAR TO THIS APPLICATION FOR CERTIFICATION.).

5932-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Premium Projects Limited & Premium Properties Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent on residential construction in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5934-74-R: Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1963, 1133, 3227, 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Vroom Construction Ltd. (Respondent) v. General Contractors' Section, Toronto Construction Association (Intervener).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York, the County of Peel, the Township of Esquesing, the Towns of Oakville and Milton in the County of Halton, and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT CARPENTERS AND CARPENTERS' APPRENTICES EMPLOYED BY THE RESPONDENT IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY ARE INCLUDED IN THE BARGAINING UNIT.).

5965-74-R: Local 579 International Brotherhood of Electrical Workers (Applicant) v. Township of Brantford Hydro Electrical Commission (Respondent).

Unit: "all employees of the respondent in the Township of Brantford save and except foremen, persons above the rank of foreman, office clerical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6096-74-R: Service Employees Union Local 478 Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. South Centennial Manor (Respondent).

Unit: "all employees of the respondent at Iroquois Falls, save and except professional nursing staff, physiotherapists, occupational therapists, supervisors, foremen, persons above the rank of supervisor and foreman, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (48 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6109-74-R: Service Employees Union Local 204, affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. The Kiwanis Club of West Toronto (Respondent).

Unit: "all employees of the respondent at Casa Loma Castle in Metropolitan Toronto, save and except foremen and supervisors, persons above the rank of foreman and supervisor, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (8 employees in the unit). (THEREFORE, HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6170-74-R: United Steelworkers of America (Applicant) v. Ramset Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (31 employees in the unit).

6174-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Tung-Sol International Corp. (Respondent).

Unit: "all office and clerical employees of the respondent in the City of Brampton, Ontario, save and except supervisors, persons above the rank of supervisor, professional engineers and field representatives." (21 employees in the unit). (HAVING REGARD THEREFORE TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SECRETARY TO THE GENERAL SALES MANAGER, THE SECRETARY TO THE PERSONNEL MANAGER, THE SUPERVISOR OF COST ACCOUNTING AND THE SUPERVISOR OF THE GENERAL ACCOUNTING SHOULD BE EXCLUDED FROM THE AFOREMENTIONED BARGAINING UNIT.).

6178-74-R: Sheet Metal Workers' International Association, Local Union 537 (Applicant) v. F. C. Leyland carrying on business as Leyland Roofing (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged in roofing in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6179-74-R: United Steelworkers of America (Applicant) v. C.F.M. Industries Limited (Respondent).

Unit: "all employees of the respondent at Whitby, save and except foremen and foreladies, persons above the rank of foreman and forelady, office and sales staff." (24 employees in the unit).

6191-74-R: International Beverage Dispensers' and Bartenders' Union Local 280, of The Hotel and Restaurant Employees' and Bartenders International Union A.F.L. C.I.O. C.L.C. (Applicant) v. Richmond Inn Limited (Respondent).

Unit: "all full time and part time tapmen, bartenders, beverage waiters, bar boys and improvers in the employ of the respondent at Richmond Hill, save and except manager and persons above the rank of manager." (13 employees in the unit). (HAVING REGARD TO THE FOREGOING).

(1974) 2 OLRB M.R. - PAGE 589.

6193-74-R: Service Employees Union Local 204, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Toronto East General and Orthopaedic Hospital (Respondent).

Unit: "all office and clerical employees employed by the respondent in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, secretaries to the Executive Director, Associate Director, Assistant Director, Medical Director, Director of Finance and Director of Nursing, persons regularly employed for not more than 24 hours per week, students employed during the university or school vacation period and persons covered by subsisting collective agreements with The Canadian Union of Operating Engineers Local 101 and persons affected by current applications for certification by The Ontario Nurses Association (part-time and full-time) and the C.S.A.O.". (188 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS ACCOUNTANT, ASSISTANT COMPTROLLER, OFFICE MANAGER AND ASSISTANT OFFICE MANAGER - BUSINESS OFFICE, OFFICE MANAGER - RADIOLOGY DEPARTMENT, CHIEF SWITCHBOARD OPERATOR, SENIOR CLERK - INFORMATION DESK, NURSING STAFFING ASSISTANT, ASSISTANT PURCHASING AGENT, CHIEF ADMITTING OFFICER, PAYROLL OFFICER, DEPUTY PAYROLL OFFICER, PERSONNEL MANAGER, ASSISTANT

PERSONNEL MANAGER AND PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT IN A CONFIDENTIAL CAPACITY RELATING TO LABOUR RELATIONS, REGISTERED MEDICAL RECORD LIBRARIANS AND LIBRARIAN - DOCTORS LIBRARY, ARE EXCLUDED FROM THE BARGAINING UNIT.).

6200-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. St. Joseph's General Hospital (Respondent).

Unit: "all Lay Technologists, Technicians and Assistants employed by the respondent in its Laboratory, Radiology, Nuclear Medicine and Respiratory Technology Departments in Thunder Bay, Ontario, save and except Chief Technologists, Head Respiratory Technologist, Charge Technologist in Nuclear Medicine Laboratory, and those above such ranks, students in training, students employed during school vacation periods, persons regularly employed for not more than twenty-four hours per week, and all employees covered by subsisting collective agreements." (28 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6204-74-R: Local 210, National Council of Canadian Labour (Applicant) v. Laidlaw Transport Limited (Respondent).

Unit: "all employees of the respondent in the city of Niagara Falls, save and except foremen, persons above the rank of foreman, office and sales staff." (5 employees in the unit).

6209-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dell Construction Co. operated by Stanley Dell Enterprises Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6210-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Ferad Carpenters Ltd. (Respondent).

Unit #1: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Unit #2: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the

County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

6213-74-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. D & D Contractors (Respondent).

Unit: "all carpenters and carpenters' apprentices and construction labourers in the employ of the respondent in the District of Kenora, including the Patricia portion, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6238-74-R: International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 (Applicant) v. Redirack Industries Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6240-74-R: Ontario Nurses' Association (Applicant) v. The Corporation of the City of Thunder Bay (Respondent).

Unit: "all registered and graduate nurses employed by the respondent at Dawson Court and Grandview Lodge Homes for the Aged at Thunder Bay, save and except Superintendent, Director of Nursing, In Service Training Programme Developer, Supervisors of Nursing and persons above the rank of Supervisor of Nursing." (38 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6257-74-R: Canadian Union of Public Employees (Applicant) v. Hawkesbury Public Library (Respondent).

Unit: "all employees of the respondent at Hawkesbury, save and except Librarian-in-Charge, persons above the rank of Librarian-in-Charge and students employed during the school vacation period." (8 employees in the unit).

6259-74-R: International Beverage Dispensers' and Bartenders' Union, Local 280, of the Restaurant Employees' and Bartenders' International Union A.F.I.-C.I.O.-C.L.C. (Applicant) v. Scarboro Public House (Respondent).

Unit: "all full-time and part-time tapmen, bartenders, beverage waiters, male and female, barboys and improvers of the respondent in Metropolitan Toronto save and except manager and persons above the rank of manager." (10 employees in the unit).

6261-74-R: Local Union #636 of the International Brotherhood of Electrical Workers AFL-CIO-CLC (Applicant) v. The Hydro Electric Commission of the City of Brampton (Respondent).

Unit: "all office employees of the respondent at Brampton, save and except supervisors, persons above the rank of supervisor, programmer and confidential secretary." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6277-74-R: Canadian Union of Public Employees (Applicant) v. Public Utilities Commission of the Town of Ingersoll (Respondent).

Unit: "all employees of the respondent in the Town of Ingersoll, save and except non-working foremen and the Chief Operator, persons above the rank of non-working foreman and Chief Operator, office, sales and clerical staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation periods." (12 employees in the unit). (BY AGREEMENT OF THE PARTIES).

6278-74-R: Canadian Union of Public Employees (Applicant) v. Public Utilities Commission of the Town of Ingersoll (Respondent).

Unit: "all office and clerical employees of the respondent in the Town of Ingersoll, save and except manager, secretary to the manager, sales staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation periods and students employed on a co-operative training program." (3 employees in the unit). (BY AGREEMENT OF THE PARTIES).

6281-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. C.A.L.S. Construction Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6282-74-R: Ontario Nurse Association (Applicant) v. Greystone Nursing Home, Hillview Nursing Home, Petersen Nursing Home Owned and operated by Versa-Care Centres of Ontario Limited (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in its nursing homes in Owen Sound, engaged in a nursing capacity, save and except Administrators, Directors of Nurses, Assistant Director of Nurses, persons

above the rank of Director of Nurses and Assistant Director of Nurses." (8 employees in the unit). (BY AGREEMENT OF THE PARTIES).

6288-74-R: Labourers' International Union of North America Local #247 (Applicant) v. Macklaim Construction (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

6289-74-R: Labourers' International Union of North America, Local 247 (Applicant) v. Comstock International Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (17 employees in the unit).

6290-74-R: Canadian Brotherhood of Railway Transport & General Workers (Applicant) v. L & W Express Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, dispatch and office staff." (5 employees in the unit).

6291-74-R: International Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Formosa Spring Brewery (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed at the company operation in Barrie, Ontario, as groundskeepers and park attendants save and except park manager and those above the rank of park manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (6 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 604.

6296-74-R: Lumber and Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Barnett-McQueen Company, Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (18 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6298-74-R: Federation of Children's Aid Staff (Applicant) v. Loyal True Blue and Orange Home (Respondent).

Unit: "all employees engaged in child care work at the respondent's premises in Richmond Hill, Ontario, save and except supervisors, those above the rank of supervisor, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (31 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6306-74-R: Labourers' International Union of North America, Local 1509 (Applicant) v. Dynamo Servicing (London) Inc. (Respondent) v. Group of Employees (Objectors).

Unit: "all construction labourers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (46 employees in the unit).

6307-74-R: Labourers' International Union of North America, Local 493 (Applicant) v. Morassut Masonry Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6309-74-R: Ontario Nurses' Association (Applicant) v. Corporation City of Sarnia Marshall Gowland Manor (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at Sarnia, save and except Director of Nursing, persons above the rank of Director of Nursing, and persons regularly employed for not more than twenty-four hours per week." (5 employees in the unit).

Unit #2: "all registered and graduate nurses regularly employed by the respondent at Sarnia for not more than twenty-four hours per week." (7 employees in the unit).

6314-74-R: Carpenters' District Council of Toronto & vicinity on behalf of Local Unions 27; 666; 681; 1133; 1963; 3227 and 3233 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dufferin Construction Company (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (80 employees in the unit).

6315-74-R: Service Employees' Union - Local 210, Windsor, Ontario (Affiliated with the Service Employees' International Union) AFL-CIO-CLC (Applicant) v. Kincardine and District General Hospital (Respondent).

Unit: "all employees of the respondent employed at its hospital in Kincardine Ontario, save and except supervisors, persons above the rank of supervisor, professional medical staff, graduate nurses, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, technical personnel, office and clerical staff and persons regularly employed for not more than twenty-four hours per week." (48 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6324-74-R: Ontario Nurses' Association (Applicant) v. Hillcrest Hospital (Respondent).

Unit: "all registered and graduate nurses employed at Hillcrest Rehabilitation Hospital, Toronto, save and except Head Nurses and persons above the rank of Head Nurse." (34 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6325-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. General Crane Industries Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in London, Ontario, save and except foremen, persons above the rank of foreman, office, clerical, technical and sales staff, security guards, field service technicians, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (115 employees in the unit).

6326-74-R: Ontario Nurses' Association (Applicant) v. The Listowel Memorial Hospital (Respondent) v. Employees (Objectors).

Unit #1: "all registered and graduate nurses employed by the respondent in Listowel, engaged in a nursing capacity, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than twenty-five hours per week." (34 employees in the unit).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity regularly employed by the respondent in Listowel for not more than twenty-four hours per week, save and except head nurses and persons above the rank of head nurse." (9 employees in the unit).

6331-74-R: Labourers' International Union of North America Local 1081 (Applicant) v. Condiversal Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

6333-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Wheelabrator Corporation of Canada Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

6334-74-R: United Steelworkers of America (Applicant) v. Quantum Technology Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (4 employees in the unit).

6337-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. E.J. Enterprises (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6338-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Keeway Construction Co. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

6339-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sora Carpentry Contractor (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6346-74-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. O. G. Associates (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6360-74-R: Labourers' International Union of North America Local 607 (Applicant) v. Heymann & Schmidt Masonary Contractors Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6376-74-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. O. G. Associates (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Townships of Merritt, Shakespeare, Baldwin, Nairn, Foster, Curtin, Mongowin, McKinnon, and Hallam in the District of Sudbury, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6380-74-R: Canadian Workers Union (Applicant) v. NC Press Ltd. (Respondent).

Unit: "all employees of the respondent save and except the general manager and persons above the rank of general manager." (4 employees in the unit).

6382-74-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, C.L.C. (Applicant) v. Scott Laboratories Ltd. (Respondent).

Unit: "all employees of the respondent at Pickering, save and except foremen, persons above the rank of foreman, sales and office staff, and students employed during the school vacation period." (13 employees in the unit).

6386-74-R: Service Employees Union Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Memorial Gardens Association Limited (Respondent).

Unit: "all employees of the respondent employed at Highland Memory Gardens Cemetery in Metropolitan Toronto, save and except superintendent, persons above the rank of superintendent, office staff, sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6393-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Corporation of the County of Elgin (Respondent).

Unit: "all employees of the respondent regularly employed at the Elgin Manor for not more than twenty-four hours per week, save and except supervisors, persons above the rank of supervisor, registered nurses and office staff." (16 employees in the unit).

6402-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Casalbil Carpenter (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6403-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Fernview Construction Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

6412-74-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Lucier Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6416-74-R: United Steelworkers of America (Applicant) v. Wheeling Industries of Canada, Limited (Respondent).

Unit: "all employees of the respondent in Dunnville, Ontario, save and except foremen, persons above the rank of foreman, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6418-74-R: Canadian Workers Union (Applicant) v. Burlington Golf and Country Club, Limited (Respondent).

Unit: "all outside employees of the respondent at Burlington, Ontario, save and except grounds superintendent, persons above the rank of grounds superintendent, and students employed during the school vacation period." (10 employees in the unit).

6422-74-R: Labourers International Union of North America Local 607 (Applicant) v. Taro Properties Incorporated (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6444-74-R: Labourers' International Union of North America Local 247 (Applicant) v. Bramalea General Contracting (Peel) Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6445-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Stead & Lindstrom Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

5506-74-R: International Union of Electrical, Radio and Machine Workers - AFL, CIO, CLC (Applicant) v. Canadian General Electric Company Limited (Respondent).

Unit: "all office, clerical and technical employees of the respondent at its Cobourg plant save and except supervisors, persons above the rank of supervisor, sales staff, confidential secretary to the Plant Manager and confidential secretary to the Manager Relations." (38 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	31
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	14

6065-74-R: Marble Masons Tile Layers and Terrazzo Workers Union No. 31 (Applicant) v. Northdown Drywall and Construction Company Limited (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, and persons above the rank of non-working foreman." (14 employees in the unit).

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	17
Number of ballots marked in favour of applicant	16
Number of ballots marked in favour of intervener	1

6308-74-R: Canadian Union of Operating Engineers (Applicant) v. Consolidated-Bathurst Packaging Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "all Stationary Engineers and those persons primarily engaged as their helpers employed by the respondent at its plant in Whitby." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list	3
Number of persons who cast ballots	3
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	0

Applications Certified Subsequent to Post-Hearing Vote

5395-73-R: Canadian Union of Public Employees (Applicant) v. The Elgin County Board of Education (Respondent).

Unit: "all office, clerical and technical employees of the respondent in the County of Elgin, save and except supervisors, persons above the rank of supervisor; secretary to the Director of Education; secretaries to the Superintendent of Business Affairs and Secretary-Treasurer; Recording Secretary, secretaries to Superintendents of Education; secretary to the Accountant; secretary to the Supervisor of Buildings and Maintenance; secretary to the Supervisor of Transportation; attendance counsellors; senior payroll clerk; senior budget clerk; school nurses; psychometrist; speech therapist; driver training instructors; Accountant; Buyer and Assistant Accountant; persons covered by a subsisting Collective Agreement between The Elgin County Board of Education and the Canadian Union of Public Employees, Local 332, and teachers as defined in the Teaching Profession Act." (105 employees in the unit).

Number of names of persons on revised voters' list		72
Number of persons who cast ballots	68	
Ballots segregated and not counted	5	
Number of ballots marked in favour of applicant	52	
Number of ballots marked against applicant	11	

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5617-74-R: Canadian Union of Public Employees (Applicant) v. The Haldimand Board of Education (Respondent).

Unit #2: "all office, clerical and technical employees of the respondent in the Regional Municipality of Haldimand-Norfolk regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except Confidential Secretary to the Director of Education, Secretary to the Business Administrator and Treasurer, Personnel Payroll Officer, Purchasing Agent and Office Manager, Accountant, and persons above those ranks." (13 employees in the unit).

Number of names of persons on voters' list		11
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	2	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5956-74-R: United Steelworkers of America (Applicant) v. H. G. Francis And Sons Limited (Respondent).

Unit: "all employees of the respondent at Ottawa, employed as oil burner servicemen, save and except foremen, persons above the rank of foreman, office and sales staff and truck drivers who are not engaged as oil burner servicemen." (12 employees in the unit).

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	4

6009-74-R: The Canadian Union of Public Employees (Applicant) v. The City of Brampton Public Library Board (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the city of Brampton Public Library Board, save and except Branch Heads, Division Heads, persons above the rank of Branch and Division Heads, Service Co-ordinators, Comptroller, Executive Assistant to the Director, Secretaries to the Director, The Director of Public Services, and the Comptroller, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (98 employees in the unit).

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	30
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	12

6144-74-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Thomas Bazos (Respondent).

Unit: "all employees of the respondent working at its cigarette warehouse in Toronto, save and except supervisors and persons above the rank of supervisor and students employed during the school vacation period." (5 employees in the unit).

Number of names of persons on voters' list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	1	

6239-74-R: Hotel and Restaurant Employees and Bartenders International Union, Restaurant, Cafeteria and Tavern Employees Union Local 254 (Applicant) v. Crawley & McCracken Co. Ltd. (Respondent).

Unit: "all employees of the respondent employed at Mattabi Mines, Ignace, Ontario, save and except manager, executive chef, persons above the rank of manager and executive chef and office staff." (18 employees in the unit).

Number of names of persons on revised voters' list		21
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	5	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

5020-73-R: United Brotherhood of Carpenters & Joiners of America, Local Union 93 (Applicant) v. Templet Services (Respondent). (no employees).

(1974) 2 OLRB M.R. - PAGE 606.

5338-73-R: Toronto Newspaper Printing Pressmen's Union No. 1 (Applicant) v. The Globe and Mail Limited (Respondent) v. Toronto Mailers' Union No. 5 (Intervener) v. Group of Employees (Objectors). (63 employees).

5723-74-R: International Union of United Plant Guard Workers of America - Local 1962 (Applicant) v. The Governing Council of the University of Toronto (Respondent) v. Service Employees Union Local 204 (Intervener).

Unit: "all security guards employed by the Respondent to protect its property at the campuses located at St. George and Scarborough in the Municipality of Metropolitan Toronto and at the Erindale Campus, Mississauga and more particularly described as building Patrol 1, Building Patrol 11 and Building Patrol 111 in a collective agreement between the Respondent and Service Employees Union, Local 204 save and except persons of the rank of sergeant and above, and security guards covered in a collective agreement between the Applicant and Respondent." (71 employees in the unit).

5911-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Torch Light Books Limited (Respondent). (15 employees).

5935-74-R: Canadian Union of Public Employees (Applicant) v. Lake of the Woods District Hospital (Respondent). (37 employees).

5969-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. St. Joseph's General Hospital (Respondent). (11 employees).

6036-74-R: The Canadian Union of Public Employees (Applicant) v. Social Planning Council of Metropolitan Toronto (Respondent). (26 employees).

6235-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Raylena Construction Co. Ltd. (Respondent). (12 employees).

6251-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. St. Joseph's General Hospital (Respondent). (31 employees).

6287-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. F.A. Stonehouse & Son Ltd. (Respondent). (2 employees).

6312-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Nation Drywall Contractors Limited (Respondent). (2 employees).

6313-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Ottawa Valley Company Limited (Respondent). (7 employees).

6327-74-R: Retail Clerks International Association (Applicant) v. Henry Birks & Sons Limited (Respondent). (2 employees).

6328-74-R: International Woodworkers of America (Applicant) v. The Great Lakes Paper Company Limited (Respondent). (1220 employees).

6345-74-R: International Brotherhood of Painters & Allied Trades Local Union 1891 (Applicant) v. York Lathing Limited (Respondent) v. Marble Masons, Tile Layers, Terrazzo Workers Union No. 31, Affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener). (12 employees).

6358-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Raylena Construction Co. Ltd. (Respondent). (12 employees).

6362-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Peel Condominium Corporation (Respondent). (3 employees).

6364-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Provincial Property Management (Respondent). (2 employees).

6414-74-R: Canadian Union of Public Employees (Applicant) v. The Lake of the Woods District Hospital (Respondent). (95 employees).

6428-74-R: Sheet Metal Workers' International Association Local 562 (Applicant) v. Dunn Sheet Metal Ltd. (Respondent). (9 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

5797-74-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Shop-Rite Catalogne Stores (Respondent).

Unit: "all employees of the respondent at Bramalea, save and except managers, persons above the rank of manager, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (54 employees in the unit).

Number of names of persons on voters' list		47
Number of persons who cast ballots	47	
Ballots segregated and not counted	5	
Number of ballots marked in favour of applicant	15	
Number of ballots marked against applicant	27	

5906-74-R: International Union, United Plant Guard Workers of America (Applicant) v. General Motors of Canada Limited (Respondent).

Voting Constituency: "All plant security officers (Plant Protection) employed by the respondent to protect its property at Plant #4, St. Catharines, Ontario, in the Regional Municipality of Niagara, save and except sergeants, persons above the rank of sergeant, students and persons employed as summer vacation replacement." (35 employees).

Number of names of persons on voters' list		23
Number of persons who cast ballots	23	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	17	

5978-74-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local 593 (Applicant) v. Brown Fintube Engineering Limited (Respondent) v. Heat Transfer Workers Union (Intervener).

Voting Constituency: "All employees of the respondent at St. Thomas, Ontario, save and except Assistant Plant Superintendent, persons above the rank of Assistant Plant Superintendent, Office, Clerical and Sales Staff, and students employed during the school vacation period." (33 employees).

Number of names of persons on revised voters' list		33
Number of persons who cast ballots	32	
Number of ballots marked in favour of applicant	9	
Number of ballots marked in favour of intervener	23	

6116-74-R: Canadian Union of Public Employees (Applicant) v. University of Ottawa (Respondent) v. International Union of Operating Engineers (Intervener).

Voting Constituency: "All non professional library employees of the respondent in Ottawa, save and except department heads and those above the rank of department head and section heads of: acquisitions, loans shelving, secretary to the administrative assistant, secretary to the head librarian, and those persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and persons covered by existing collective agreements." (169 employees).

Number of names of persons on revised voters' list		168
Number of persons who cast ballots	125	
Ballots segregated and not counted	1	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	57	
Number of ballots marked against applicant	65	

6143-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Franklin Electric of Canada Ltd. (Respondent).

Voting Constituency: "All employees of the respondent at Strathroy, Ontario, save and except foremen, foreladies, and dispatchers, those above the rank of foreman, forelady and dispatcher, office and technical employees, sales personnel, plant guards, employees regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and students employed on a co-operative training basis with a university." (199 employees).

Number of names of persons on revised voters' list		186
Number of persons who cast ballots	164	
Number of ballots marked in favour of applicant	74	
Number of ballots marked against applicant	90	

6203-74-R: Optical & Plastic Technicians & Allied Workers Union, Local 67, affiliated to U.H.C. & M.W.I.U. - C.L.C. (Applicant) v. K & H Central Laboratories of Ophthalmic Products Ltd. (Respondent).

Voting Constituency: "All laboratory employees of the respondent in the City of Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (15 employees).

Number of names of persons on revised voters' list		13
Number of persons who cast ballots	13	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	11	

6215-74-R: Teamsters, Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. B. F. Goodrich Chemical Canada Limited (Respondent).

Voting Constituency: "All employees of the respondent employed at the Niagara Chemical Plant at Thorold, Ontario, Regional Municipality of Niagara, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (82 employees).

Number of names of persons on revised voters' list		81
Number of persons who cast ballots	76	
Number of ballots marked in favour of applicant	25	
Number of ballots marked against applicant	51	

6232-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Toronto Western Hospital (Respondent).

Voting Constituency: "All technologists, technicians and their assistants employed by the respondent in Metropolitan Toronto, in medical laboratories,

E.C.G., E.E.G., respiratory nuclear medicine, cardiovascular laboratory, immunology and radiology departments, save and except assistant chief technologists, those above the rank of assistant chief technologist, students in training, students employed during school vacation periods, office and clerical staff, persons employed for not more than twenty-four hours per week and persons covered by other bargaining units." (140 employees). (THE BOARD FURTHER DIRECTED THAT "RADIOLOGICAL TECHNICIANS" BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD CONCERNING THEIR ELIGIBILITY FOR INCLUSION IN THE VOTING CONSTITUENCY.). (THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		125
Number of persons who cast ballots	109	
Ballots segregated and not counted	25	
Number of ballots marked in favour of applicant	42	
Number of ballots marked against applicant	42	

Certification Dismissed Subsequent to Post-Hearing Vote

5438-74-R: International Molders & Allied Workers Union (Applicant) v. Ex-Cell-O Corporation of Canada, Limited (Respondent).

Unit #1: "all office and clerical employees of the respondent at London, save and except supervisors, persons above the rank of supervisor, Assistant Personnel Manager, Plant Nurse, Purchasing Agent, Outside Salesmen, Methods and Standards Analysts, Professional Engineers, Metallurgist, Secretary to the General Manager, Secretary to the Personnel Manager, persons employed in the Drafting and Engineering Department, persons employed for not more than twenty-four hours per week and employees covered by a subsisting collective agreement between the respondent and the International Molders and Allied Workers Union, Local 49, dated the 24th day of December, 1971." (33 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT THE TERM "PROFESSIONAL ENGINEERS" ENCOMPASSES THOSE PROFESSIONAL ENGINEERS PRACTICING THEIR PROFESSION WITH THE RESPONDENT COMPANY.).

Number of names of persons on voters' list		37
Number of persons who cast ballots	34	
Number of ballots marked in favour of applicant	10	
Number of ballots marked against applicant	24	

(BARGAINING UNIT #2 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5594-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Wyvern Construction Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

Number of names of persons on revised voters' list		7
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	4	

5973-74-R: Retail Clerks International Association (Applicant) v. Henry Birks & Sons Limited (Respondent).

Unit: "all employees of the respondent employed at its warehouse at 210 Lesmill Road, Don Mills, save and except foremen, persons above the rank of foreman, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation periods." (29 employees in the unit).

Number of names of persons on revised voters' list		26
Number of persons who cast ballots	24	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	13	

6123-74-R: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Coca-Cola Ltd. (Respondent).

Unit: "all employees of the respondent at Belleville save and except foremen, persons above the rank of foreman or sales supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (29 employees in the unit).

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	22
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	11

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

5938-74-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Dempsters Bread Division of Corporate Foods Limited (Respondent). (38 employees).

6006-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taro Properties Incorporated (Respondent). (7 employees).

6264-74-R: International Brotherhood of Painters and Allied Trades Local Union 1590 (Applicant) v. Earls Welding (Division of Milrig Industries Ltd.) (Respondent) v. United Steelworkers of America (Intervener). (2 employees).

6332-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Beaver Keystone Construction Ltd. (Respondent). (3 employees).

6359-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Global-Dixie Limited (Respondent). (2 employees).

6373-74-R: Canadian Union of Public Employees (Applicant) v. Cochrane Nursing Home Limited (Respondent). (2 employees).

6383-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. S. B. McLaughlin Associates Ltd. (Respondent). (21 employees).

6387-74-R: Bricklayers Masons & Plasterers International Union of America Local #4, Ontario (Applicant) v. Niagara Drywall Limited (Respondent). (4 employees).

6394-74-R: Service Employees Union, Local 204, affiliated with the SEIU, AFL, CIO, CLC (Applicant) v. Collingwood General and Marine Hospital (Respondent). (3 employees).

6413-74-R: Labourers International Union of North America, Local 607 (Applicant) v. Tom Jones & Sons Limited (Respondent). (2 employees).

6415-74-R: Labourers International Union of North America, Local 493 (Applicant) v. Frank Watt Sod & Seed Co. Ltd. (Respondent). (4 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING SEPTEMBER

5194-73-R: Employees of S. Henry & Sons (Applicant) v. Labourers International Union of North America, Local 527 (Respondent) v. S. Henry & Sons Co. Ltd. (Intervener). (GRANTED).

Unit: "all construction labourers in the employ of S. Henry & Sons Co. Ltd. in the Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (29 employees in the unit).

Number of names of persons on revised voters' list		25
Number of persons who cast ballots	25	
Number of ballots marked in favour of respondent	3	
Number of ballots marked against respondent	22	

5905-74-R: Rodger Holmes (Applicant) v. The International Association of Machinists & Aerospace Workers, Local #1772 (Respondent). (GRANTED).

Unit: "all hourly paid employees of the Rexdale Plant of Sperry Remington Division of Sperry Rand Canada Ltd., save and except foremen, those above the rank of foreman, office and sales staff." (15 employees in the unit).

Number of names of persons on revised voters' list		13
Number of persons who cast ballots	12	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	12	

5993-74-R: Steven Clement, et al. (Applicant) v. The Civil Service Association of Ontario, Inc. (Respondent) v. Muskoka Ambulance Service (Intervener). (15 employees). (DISMISSED).

6311-74-R: Central Ambulance Dispatch Service Windsor Ontario (Applicant) v. Civil Service Association of Ontario (Respondent). (6 employees). (GRANTED).

6342-74-R: Textile Workers Union of America, Local 1430 (Applicant) v. Textile Workers Union of America, C.L.C.-A.F.L.-C.I.O. (Harding Carpets Limited) (Respondent). (19 employees). (DISMISSED).

6343-74-R: Vincent VanSickle (Applicant) v. Canadian Food and Allied Workers, Local Union 633, chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, CIO, CLC (Respondent) v. Darrigo's Food Markets Ontario Limited (Intervener). (15 employees). (DISMISSED).

6355-74-R: John Pierro (Applicant) v. Canadian Food and Allied Workers, Local Union 175 chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, CIO, CLC (Respondent) v. Darrigo's Food Markets, Ontario Limited (Intervener). (58 employees). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

SEPTEMBER

61-74-PH: Cochrane Nursing Home Limited (Applicant) v. Yvette Ouellete, Lisette Vaillancourt, Francine Leclerk et al (Respondents). (TERMINATED).

6391-74-U: General Bakeries Limited (Applicant) v. Gregory Vassos et al (See Schedules A and B attached hereto) (Respondents). (WITHDRAWN).

6397-74-U: B G Checo Engineering Limited (Applicant) v. Those Persons Named in Schedule "A" Attached Hereto (Respondents). (WITHDRAWN).

6399-74-U: General Bakeries Limited (Applicant) v. Michael D. DiFrancisco et al (See Schedule A attached hereto) (Respondents). (WITHDRAWN).

6502-74-U: Continental Can Company of Canada Limited (Applicant) v. R. G. Bell, et al, (As per attached Schedules) (Respondents). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

5867-74-U: Federation of Childrens' Aid Staffs (Applicant) v. Catholic Childrens' Aid Society of Metropolitan Toronto (Respondent). (DISMISSED).

5943-74-U: Warehousemen and Miscellaneous Drivers Local 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. F. G. Lister & Co. Ltd. (Respondent). (WITHDRAWN).

6051-74-U: Walter Lumsden (Applicant) v. Kawartha Beverages Limited (Respondent). (WITHDRAWN).

6285-74-U: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Property Management Ltd. and Moe Margoless (Respondents). (WITHDRAWN).

6294-74-U: Lennox Industries (Canada) Limited (Applicant) v. Victor Rochon et al (Respondents). (WITHDRAWN).

6392-74-U: General Bakeries Limited (Applicant) v. Gregory Vassos, et al (See Schedules A and B attached hereto) (Respondents). (WITHDRAWN).

6400-74-U: General Bakeries Limited (Applicant) v. Michael D. DiFrancisco et al (See Schedule A attached hereto) (Respondents). (WITHDRAWN).

6419-74-U: B G Checo Engineering Limited (Applicant) v. Dennis Dallaire and Howard Deschamps (Respondents). (WITHDRAWN).

6420-74-U: B G Checo Engineering Limited (Applicant) v. Those persons named in Schedule "A" attached hereto (Respondents). (WITHDRAWN).

6425-74-U: Federation of Children's Aid Staffs (Applicant) v. Loyal True Blue & Orange Home (Respondent). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT) DISPOSED

OF DURING SEPTEMBER

58-74-PH: The Norfolk Hospital Association (Applicant) v. John M. Askin (Respondent). (GRANTED).

59-74-PH: The Norfolk Hospital Association (Applicant) v. London and District Building Service Workers' Union, Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Respondent). (GRANTED).

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60-74-PH: The Norfolk Hospital Association (Applicant) v. London and District Building Service Workers' Union, Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Respondent). (GRANTED).

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62-74-PH: Cochrane Nursing Home Limited (Applicant) v. Yvette Ouellete, Lisette Vaillancourt, Francine Leclerc et al (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING
SEPTEMBER

2668-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

5425-73-U: Office and Professional Employees International Union (Complainant) v. Milton Meretsky and Melvin Muroff, carrying on business as Barristers and Solicitors, under the name of Meretsky and Muroff (Respondent). (DISMISSED).

5457-74-U: Nurses' Association Altamont Nursing Home (Complainant) v. Altamont Nursing Home (Respondent). (DISMISSED).

5736-74-U: International Woodworkers of America (Complainant) v. Boyle-Midway (Canada) Limited (Respondent). (DISMISSED).

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5977-74-U: George Freris (Complainant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) and Douglas Aircraft Company of Canada Ltd. (Respondents). (TERMINATED).

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6054-74-U: United Steelworkers of America (Complainant) v. Bristol Metal Industries of Canada Limited (Respondent). (DISMISSED).

6141-74-U: Edgar Cowie (Complainant) v. Local 1285, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (Respondent) v. Chrysler Canada Limited (Intervener). (DISMISSED).

6159-74-U: Mr. Angelo Colacci (Complainant) v. Local 46 of Plumbers & Steamfitters Union (Respondent). (DISMISSED).

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6185-74-U: Pieter Wessel (Complainant) v. Asbestos Workers Local 95 and Wilf Hepburn, Business Agent (Respondents). (DISMISSED).

6206-74-U: United Electrical, Radio & Machine Workers of America (UE) (Complainant) v. Superior Continental Canada Limited (Respondent). (DISMISSED).

6225-74-U: United Steelworkers of America (Complainant) v. Ramset Fasteners Limited (Respondent). (WITHDRAWN).

6226-74-U: United Steelworkers of America (Complainant) v. Ramset Fasteners Limited (Respondent). (WITHDRAWN).

6227-74-U: United Steelworkers of America (Complainant) v. Ramset Fasteners Limited (Respondent). (WITHDRAWN).

6276-74-U: United Steelworkers of America (Complainant) v. Beam Building and Supply Company (Respondent). (WITHDRAWN).

6286-74-U: Labourers' International Union of North America, Local 183 (Complainant) v. Belmont Property Management Ltd. and Moe Margolese (Respondents). (WITHDRAWN).

6436-74-U: Canadian Union of Public Employees - Local 1394 (Complainant) v. Bayview Villa (Villa Centres Limited) (Respondent). (WITHDRAWN).

6478-74-U: John (Hanna) Bachir (Complainant) v. Stan Patronsky Business Agent of the Boilermakers Union Local 128 (Respondent). (WITHDRAWN).

APPLICATION UNDER SECTION 39 DISPOSED OF DURING SEPTEMBER

6187-74-M: Joseph Rempel (Applicant) v. United Steelworkers of America (Respondent Trade Union) v. Ferranti - Packard Limited (Respondent Employer). (DISMISSED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

6089-74-M: Canadian Union of Public Employees, Local 137 (Trade Union) v. Memorial Hospital - Bowmanville (Employer). (GRANTED).

6099-74-M: The Canadian Union of Public Employees Local Union No. 822 (Trade Union) v. The Lake of the Woods District Hospital, Kenora, Ontario (Employer). (GRANTED).

6100-74-M: Nurses' Association St. Joseph's Hospital, Hamilton (Trade Union) v. St. Joseph's Hospital, Hamilton (Employer). (GRANTED).

6157-74-M: Service Employees Union, Local 204, AFL-CIO-CLC (Trade Union) v. Collingwood General and Marine Hospital (Employer). (GRANTED).

6188-74-M: Service Employees' International Union, A.F. of L., C.I.O., C.L.C., Local 183 (Trade Union) v. Trenton Memorial Hospital (Employer). (GRANTED).

6189-74-M: London & District Building Service Workers' Union, Local 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (Trade Union) v. The Norfolk Hospital Association at Simcoe, Ontario (Employer). (GRANTED).

6212-74-M: Oil, Chemical & Atomic Workers International Union and its Local 9-698 (Trade Union) v. Canadian Industries Limited Plastics Brampton Works (Employer). (GRANTED).

6228-74-M: Canadian Union of Public Employees, Local 1605 (Trade Union) v. Mohawk Hospital Services, Inc. (Employer). (GRANTED).

6268-74-M: London and District Building Service Workers Union, Local 220 (Trade Union) v. Centre Grey General Hospital (Employer). (GRANTED).

6274-74-M: International Union of Operating Engineers, Local 796 (Trade Union) v. The Doctors Hospital (Employer). (GRANTED).

6275-74-M: Service Employees Union, Local 210 (Trade Union) v. Sydenham District Hospital (Employer). (GRANTED).

6279-74-M: Oil, Chemical and Atomic Workers International Union, Local 9-780 (Trade Union) v. Diamond Shamrock Canada Ltd. (Employer). (GRANTED).

6280-74-M: Warehousemen and Miscellaneous Drivers Union Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 141, London District Ontario, Canada (Trade Union) v. Metro Toronto News Company, Metropolitan Toronto, Ontario, Western Ontario Distributors Ltd., London, Ontario (Employer). (GRANTED).

6299-74-M: Service Employees' Union, Local 210 (Trade Union) v. The Leamington District Memorial Hospital (Employer). (GRANTED).

6300-74-M: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America U.A.W. and its Local 569 (Trade Union) v. Sealed Power Corporation of Canada Limited (Employer). (GRANTED).

6302-74-M: Service Employees' International Union, A.F. of L., C.I.O., C.L.C., Local 204 (Trade Union) v. Versaservices Limited, Division of VS Services Ltd. Hospital Services Division Located at the New Mount Sinai Hospital, Toronto, Ontario (Employer). (GRANTED).

6303-74-M: Canadian Union of Public Employees and its Local 783 (Trade Union) v. Cornwall General Hospital (Employer). (GRANTED).

6304-74-M: Canadian Union of Public Employees and its Local 1611 (Trade Union) v. Cornwall General Hospital (Employer). (GRANTED).

6321-74-M: Service Employees Union, Local 268 (Trade Union) v. The Lady Dunn General Hospital, Wawa, Ontario (Employer). (GRANTED).

6329-74-M: Canadian Union of Public Employees and its Local No. 137 - C.L.C. (Trade Union) v. Beaver Food Service Associates Limited, Memorial Hospital, Bowmanville, Ontario (Employer). (GRANTED).

6330-74-M: Local 1649E Textile Workers Union of America C.L.C. - AFL-CIO (Trade Union) v. Cornwall Regional Hospital Linen Service (Employer). (GRANTED).

6356-74-M: International Union of Operating Engineers, Local 796 (Trade Union) v. Royal Victoria Hospital, Barrie, Ontario (Employer). (GRANTED).

6357-74-M: Civil Service Association of Ontario (Inc.) (Trade Union) v. Chedoke Hospitals, Hamilton (Employer). (GRANTED).

6365-74-M: International Union of Operating Engineers, Local 772 (Trade Union) v. The Greater Niagara General Hospital (Respondent). (GRANTED).

6371-74-M: CSAO (Inc.) (Trade Union) v. Royal Victoria Hospital of Barrie, Ontario (Employer). (GRANTED).

6372-74-M: Service Employees' Union, Local 210 (Trade Union) v. The Salvation Army Grace Hospital, Windsor, Ontario (Employer). (GRANTED).

6385-74-M: Civil Service Association of Ontario (Inc.) (Trade Union) v. St. Joseph's Hospital (Employer). (GRANTED).

6398-74-M: International Union of Operating Engineers, Local 796 (Trade Union) v. Orillia Soldiers' Memorial Hospital (Employer). (GRANTED).

6410-74-M: The Canadian Union of Public Employees, Local Union No. 1065 (Trade Union) v. Joseph Brant Memorial Hospital of the Burlington-Nelson Hospital (Employer). (GRANTED).

6435-74-M: The Canadian Union of Operating Engineers, Local 103 (Trade Union) v. Douglas Memorial Hospital (Employer). (GRANTED).

6456-74-M: The Canadian Union of Public Employees, Local Union No. 1065 (Trade Union) v. VS Service Ltd. (Food Management Services) at Joseph Brant Memorial Hospital at Burlington (Employer). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING SEPTEMBER

5089-73-R: The International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Regional Municipality of Peel (Respondent) v.

Canadian Union of Public Employees; Canadian Union of Public Employees and its Local 831; Canadian Union of Public Employees, Local 1626 (Intervener). (GRANTED).

Unit: "All employees of the respondent in its Public Works Department save and except foremen, persons above the rank of foreman, office staff."

Number of names of persons on revised voters' list		147
Number of persons who cast ballots	137	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	78	
Number of ballots marked in favour of intervener	58	

5091-73-R: The International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Regional Municipality of Halton (Respondent) v. The Canadian Union of Public Employees on behalf of its Local #44, The Canadian Union of Public Employees and its Local 73 and The Canadian Union of Public Employees and its Local 136 (Intervener #1) v. The International Brotherhood of Electrical Workers, Local 1766 (Intervener #2). (GRANTED).

Unit: "All employees of the respondent in its Maintenance and Operations Division of the Department of Public Works save and except foremen, Persons above the rank of foreman, office, clerical and technical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period."

Number of names of persons on revised voters' list		102
Number of persons who cast ballots	96	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	75	
Number of ballots marked in favour of intervener	19	

6305-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Union Local 141 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. General Bakeries Limited (Wonder Division) (Respondent) v. Retail, Wholesale, Bakery and Confectionery Workers Union, Local 461 (Intervener). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING
SEPTEMBER

4478-73-M: United Steelworkers of America (Applicant) v. Canadian Industries Limited (Respondent). (WITHDRAWN).

5611-74-M: Canadian Union of Public Employees, Local 65 (Applicant) v. The Corporation of the Town of Fort Frances (Respondent).

5750-74-M: The Town of Fort Frances (Applicant) v. Canadian Union of Public Employees, Local 65 (Respondent). (AFFIRMATIVE).

6001-74-M: Canadian Union of Public Employees, Local 1499 (Applicant) v. L'Universite Saint-Paul carrying on business under the name of Novalis (Respondent). (TERMINATED).

6244-74-M: Local 1325 Canadian Union of Public Employees (Applicant) v. Toronto Board of Education (Respondent). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

5712-74-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Len Ariss and Company Limited (Respondent) v. The Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Intervener). (REQUEST DENIED).

5994-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Stead and Lindstrom Limited (Respondent). (REQUEST DENIED).

6066-74-R: Marble Masons Tile Layers and Terrazzo Workers Union No. 31 (Applicant) v. A.V. Hallam Lathing and Plastering Ltd. (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #1) v. Local Union 1747, United Brotherhood of Carpenters and Joiners of America (Intervener #2) v. Operative Plasterers and Cement Masons International Association of The United States and Canada, Local Union No. 124, Ottawa (Intervener #3). (REQUEST DENIED).

6083-74-R: Labourers' International Union of North America Local 607 (Applicant) v. Tackle Construction Limited (Respondent). (REQUEST DENIED).

6084-74-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. R.E. Hodgins Industries Ltd. (Respondent). (REQUEST DENIED).

6178-74-R: Sheet Metal Workers' International Association, Local Union 537 (Applicant) v. F.C. Leyland carrying on business as Leyland Roofing (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

6245-74-R: Sheet Metal Workers' International Association, Local Union 537 (Applicant) v. John Abrahams Roofing Limited (Respondent). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

5470-74-U: Ward Shellington and Those Persons Named In Schedule "A" Attached Hereto (Complainants) v. Imperial Tobacco Products (Ontario) Limited, Tobacco Workers International Union, Local 323, Charles Hill, Alexander Jackson, Sydney Harker, John Wynd, Albert Battell, Anstruther Williamson, George Jones, Harvey Stewart, Leslie Cook and Bruce Starkey (Respondents). (REQUEST DENIED).

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5862-74-U: Walter C. Sarich (Complainant) v. Corporation of the City of Saulte Ste. Marie, Ontario (Respondent). (REQUEST DENIED).

STATISTICAL TABLES 2ND QUARTER AND 1ST 6 MONTHS OF FISCAL YEAR 1974-75

TABLE I

APPLICATIONS AND COMPLAINT RECEIVED BY THE ONTARIO LABOUR
RELATIONS BOARD

	2nd Quarter' Fiscal Year 1974-75	Number Filed	
		1st 6 Months Fiscal Year	
		1974-75	1973-74
I. Certification	335	689	703
II. Declaration Terminating Bargaining Rights	13	21	29
III. Declaration of Successor Status	14	24	16
IV. Declaration that Strike Unlawful	23	56	24
V. Declaration that Lock-Out Unlawful	-	1	2
VI. Consent to Prosecute	37	76	56
VII. Complaint of Unfair Practice in Employment (Section 79)	37	83	109
VIII. Miscellaneous	<u>122</u>	<u>171</u>	<u>44</u>
TOTAL	<u>581</u>	<u>1121</u>	<u>983</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	2nd Quarter Fiscal Year 1974-75	Number	
		1st 6 Months Fiscal Year	
		1974-75	1973-74
Hearings and Continuation of Hearings by the Board	278	641	641

July to September.

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	Number Disposed of		
	2nd Quarter Fiscal Year	1st 6 Months Fiscal Year	
	1974-75	1974-75	1973-74
I. Certification	346	720	655
II. Declaration Terminating Bargaining Rights	17	29	23
III. Declaration of Successor Status	2	8	29
IV. Declaration that Strike Unlawful	16	43	23
V. Declaration that Lock-Out Unlawful	-	2	3
VI. Consent to Prosecute	25	68	55
VII. Complaint of Unfair Practice in Employment (Section 79)	50	108	123
VIII. Miscellaneous	<u>108</u>	<u>147</u>	<u>29</u>
TOTAL	564	1125	940
	<u> </u>	<u> </u>	<u> </u>

TABLE IV
APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	Number of Applications			Number of Employees*		
	2nd Quarter Fiscal Year 1974-75	1st 6 Mths F.Y. 1974-75	1973-74	2nd Quarter Fiscal Year 1974-75	1st 6 Mths F.Y. 1974-75	1973-74
<u>I. Certification</u>						
Granted	238	496	444	6893	16038	12036
Dismissed	77	159	141	4805	10330	6273
Withdrawn	<u>31</u>	<u>65</u>	<u>70</u>	<u>1065</u>	<u>2006</u>	<u>1713</u>
TOTAL	346	720	655	12763	28374	20022
	==	==	==	==	==	==
<u>II. Termination of Bargaining Rights</u>						
Granted	6	12	13	89	280	927
Dismissed	8	14	10	312	458	511
Withdrawn	<u>3</u>	<u>3</u>	<u>-</u>	<u>1355</u>	<u>1355</u>	<u>-</u>
TOTAL	17	29	23	1756	2093	1438
	==	==	==	==	==	==

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

	Number of Applications		
	2nd Quarter Fiscal Year 1974-75	1st 6 Months Fiscal Year	
		1974-75	1973-74
III. <u>Declaration that Strike</u> <u>Unlawful</u>			
Granted	4	6	2
Dismissed	5	13	5
Withdrawn	<u>7</u>	<u>24</u>	<u>16</u>
TOTAL	16	43	23
	==	==	==
IV. <u>Declaration that Lock-Out</u> <u>Unlawful</u>			
Granted	-	-	-
Dismissed	-	2	3
Withdrawn	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	-	2	3
	=	=	=
V. <u>Consent to Prosecute</u>			
Granted	5	7	8
Dismissed	1	12	10
Withdrawn	<u>19</u>	<u>49</u>	<u>37</u>
TOTAL	25	68	55
	==	==	==
VI. <u>Complaint of Unfair</u> <u>Practice in Employment</u> <u>(Section 79)</u>			
Granted	5	6	9
Dismissed	20	51	44
Withdrawn	<u>25</u>	<u>51</u>	<u>70</u>
TOTAL	50	108	123
	==	==	==

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	2nd Quarter	1st 6 Months Fiscal Year	
	Fiscal Year 1974-75	1974-75	1973-74
<u>Certification after vote*</u>			
Pre-Hearing Vote	16	27	38
Post-Hearing Vote	21	53	44
Ballots not Counted	-	-	-
 <u>Dismissed after vote</u>			
Pre-Hearing Vote	22	47	21
Post-Hearing Vote	12	25	18
Ballots not Counted	<u>1</u>	<u>1</u>	<u>2</u>
 TOTAL	72	153	123
	<u>==</u>	<u>==</u>	<u>==</u>

*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICANTS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	2nd Quarter	1st 6 Months Fiscal Year	
	Fiscal Year 1974-75	1974-75	1973-74
*Respondent Union Successful	2	3	3
Respondent Union Unsuccessful	<u>4</u>	<u>10</u>	<u>8</u>
 TOTAL	6	13	11
	<u>==</u>	<u>==</u>	<u>==</u>

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the

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Monthly Report

ONTARIO LABOUR RELATIONS BOARD

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1974] OLRB REP.

PRACTICE NOTE NO. 1

July 18, 1961, as amended October 12, 1966, October 18, 1971, and November 1974.

BOARD HEARINGS OF COMPLAINTS UNDER
SECTION 79 OF THE LABOUR RELATIONS ACT

1. Where, on a complaint made pursuant to the provisions of section 79 of The Labour Relations Act, a field officer is appointed* by The Labour Relations Board to inquire into the complaint, it is the duty of the field officer to interview the aggrieved persons and the parties who may have knowledge of the complaint, and attempt to effect a settlement.

2. A copy of the Board's appointment will be presented to the respondent by the field officer, together with a letter from the Registrar indicating that a tentative hearing date has been set for the purpose of entertaining the evidence and representations of the parties, should the complaint not be settled.

3. When the field officer reports that he is unable to effect a settlement, a panel of the Board will deal with the complaint either

- a) on the basis of the field officer's report
and the statements obtained by him,
- or
- b) by way of hearing in accordance with the
Registrar's Notice of Tentative Hearing
Date.

4. Should a hearing of the complaint proceed, the information obtained by the field officer will not be made available to the panel of the Board hearing the complaint. The only material before the hearing panel is the formal documents filed in the proceedings, i.e., the complaint (Form 32 or 33), the reply to the complaint (Form 35) filed by the respondent, any relevant correspondence, and any intervention (Form 35a).

5. Section 100(6) of The Labour Relations Act provides that:

* Under subsection 4 of section 79 of The Labour Relations Act the Board may, in its discretion, dispense with an inquiry by a field officer and proceed to a hearing directly. The procedure applicable in such situations is covered by sections 28 to 31 of the Board's Rules of Procedure.

No information or material furnished to or received by a field officer under this Act and no report of a field officer shall be disclosed except to the Board or as authorized by the Board . . .

THE WRITTEN STATEMENTS OBTAINED BY A FIELD OFFICER ARE NOT DISCLOSED TO THE PARTIES TO A PROCEEDING UNDER SECTION 79 OF THE ACT.

5. If the members of the Board who may be called upon to hear a complaint on its merits had access to these statements and took them into account in arriving at a conclusion, they would be making their determination on evidence not available to the parties.

6. At any hearing, the parties are required to call evidence in support of their respective positions. The Board calls upon the complainant to prove the ingredients of its complaint to the satisfaction of the Board. The complainant is therefore required to produce the necessary witnesses at the hearing to prove its case. Failure to do so will result in the dismissal of the complaint.

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DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: September 26, 1974.

I dissent.

Initially I may say that even if the charge contained in the letter of the applicant of July 18th, 1974, was proven, I would not find the circumstances such that either the applicant should be certified, or that a new vote should be ordered.

However, I wish to deal, in any event, with the argument made by counsel for the respondent that Mr. Edwards should be called to give evidence of a statement purportedly dictated to him while he was attempting to assist the parties with their voting arrangements.

The presence of Mr. Edwards at such meeting was as a result of a request by the applicant to the Registrar for assistance in setting up the voting arrangements. His appearance was at the direction of the Registrar rather than at the direction of the Board. This is not in any way to be critical of the Registrar, for in the day to day workings of an administrative tribunal, directions from the Registrar are made to facilitate the administration of the Act and, with few exceptions, there are no repercussions therefrom.

Unfortunately, the present case is one of these exceptions.

The sections of the Act argued before us were sections 100(6) and section 98, which read as follows:

"98. No member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil suit respecting information obtained in the discharge of their duties under this Act."

"100(6) No information or material furnished to or received by a field officer under this Act and no report of a field officer shall be disclosed except to the Board or as authorized by the Board, and no member of the Board and no field officer is a competent or compellable witness in proceedings before a court or other tribunal respecting any such information, material or report."

In my respectful opinion, Mr. Edwards cannot be excused from giving evidence under the provisions of either section in that he was neither acting as a field officer "under this Act" nor was he indeed acting in any function "under this Act". Indeed, his only presence was as a result of a courtesy gesture on the part of the Registrar.

Neither am I comforted in the majority decision by the Rules of Procedure, and Regulations under The Labour Relations Act in that such rules provide, in a general way, for the Registrar only to settle voting arrangements for the parties.

In summary, therefore, I am of the opinion, and would so find, that Mr. Edwards was not acting under this Act and accordingly should not be excused from giving evidence.

6378-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. MAPLE LEAF MILLS LIMITED; MASTER FEEDS BRANCH, LONDON, ONTARIO (Respondent).

BEFORE: G. W. Adams, Vice-Chairman, and Board Members D. B. Archer and W.H. Wightman.

APPEARANCES AT THE HEARINGS: I. J. Thomson for the applicant; T. Sargeant and S. A. Miller for the respondent.

DECISION OF THE BOARD: October 2, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
2. The name "Master Feeds Division of Maple Leaf Mills" appearing in the style of cause of this application as the name of the respondent is amended to read: "Maple Leaf Mills Limited; Master Feeds Branch, London, Ontario".
3. This is an application for certification. At the outset of the hearing, the respondent raised a constitutional law objection to the Board's jurisdiction over the labour relations between these parties.
4. The applicant had not been given any advance notice of this objection and was therefore unprepared to respond to it. The representative for the applicant was not accompanied by an advisor who could provide a meaningful basis for the cross-examination of the respondent's witnesses or present relevant evidence.
5. It was therefore agreed that this matter should be adjourned for a short period of time to give the applicant an opportunity to prepare for the challenge.
6. The Registrar is directed to list this matter for hearing as soon as possible.

5897-74-R: Canadian Union of Public Employees (Applicant) v. THE TORONTO WESTERN HOSPITAL (Respondent) v. Canadian Union of General Employees (Intervener).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: S. R. Hennessy, R. Chisholm and H. Browne for the applicant; I. H. McGowan for the respondent; P. Murphy for the intervener.

DECISION OF THE BOARD: October 2, 1974.

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2. Pursuant to the decision of the Board dated August 13, 1974, the Board directed the Registrar to proceed with the counting of the ballots cast during the course of these proceedings upon disposing of the intervener's written representations with respect to timeliness as set out in its letter dated August 26, 1974, and the matter was set down for hearing on September 30, 1974.

3. Upon hearing the representations of the parties, the Board confirms the conclusions reached in its decision in this matter dated August 13, 1974, regarding the timeliness of this application.

4. At the hearing of this matter, the intervener also requested that the vote be set aside on the grounds that the initial "Form 6" notice to employees was not sent to certain persons who had been discharged by the respondent and whose cases by way of Section 79 proceedings, had been, at the time, pending before another division of the Board. This matter had been dealt with in the Board's decision dated July 16, 1974, wherein the Registrar was directed to serve these persons with notice of the upcoming vote. This took the form of mailing by registered letter, the "Form 42" notice which was sent by the Registrar to some 306 persons whose names and addresses appeared on a list supplied by the intervener for this purpose. Of this number, 36 notices were returned on the basis that these persons could not be located. Of the remaining names it would appear that 32 persons presented themselves at the poll at which time their ballots were segregated. In the interim, it would appear that the intervener has decided not to proceed further with its Section 79 proceedings in relation to these persons and has now entered into settlement arrangements with the respondent in this regard.

5. In these circumstances, even if we were to assume that the Board initially did not serve the said persons with notice of these proceedings, we are satisfied that they were nevertheless subsequently given proper notice of the taking of the vote such that no miscarriage of justice has occurred sufficient to warrant the setting aside of the vote.

6. The Board further finds that all employees of the respondent, save and except professional staff, medical staff, graduate nursing staff, graduate pharmacists, graduate dietitians, technical personnel, students on a course leading to employment in one of the aforementioned exempt categories, supervisors, persons above the rank of supervisor, chief engineers, clerical staff, persons regularly employed for not more than twenty-four (24) hours per week, students employed during the school vacation period, and persons covered by a subsisting collective agreement between the Hospital and the Canadian Union of Operating Engineers, Local 101, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . . .

8. On the taking of the pre-hearing representation vote directed by the Board more than fifty per cent of the ballots cast were cast in favour of the applicant.

9. A certificate will issue to the applicant.

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6221-74-R: Sheet Metal Workers' Local Union 285 (Applicant) v. MO-MEK SYSTEMS LTD. (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Arthur L. Moore and John Kurchak for the applicant; Andrew C. Moore for the respondent.

DECISION OF THE BOARD: October 7, 1974

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3. The Board has considered the Report of the Examiner dated September 6, 1974, and the representations of the parties.

4. The Board further finds that Gerald Morais was employed by the respondent on the date of the making of this application as a sheet metal worker. Mr. Morais did not supervise any employees, and, while there is some indication that the respondent intended to train him for a supervisory position, there is nothing in the evidence to indicate that on the date of the making of this application he exercised any managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

5. The other person affected by this application, Alex Reid, is also a sheet metal worker. Mr. Reid described himself as subcontracting for the respondent. The evidence establishes that he does not have a written contract with the respondent and that he is paid a predetermined price for each unit installed. He receives completion slips from the owner of the buildings which indicate the number of units which have been installed and upon presenting these slips to the respondent he is paid by the respondent.

6. Mr. Reid is not obligated to install any specific number of units. The respondent supplies the materials to be used on the job and Mr. Reid is not required to order any material himself. He uses his own tools and the respondent neither deducts income tax from the payments made to him nor pays unemployment insurance on his behalf. The respondent pays workmen's compensation for Mr. Reid who sets his own hours of work. The respondent and Mr. Reid appear to have agreed that at the end of the year Mr. Reid will reimburse the respondent for the payments made to workmen's compensation.

7. The applicant argues that Mr. Reid is an employee of the respondent while the respondent adopts the position that he is an independent contractor. The problem of determining what formula is to be applied in ascertaining whether, in the field of labour relations, a relationship is one of employment or of an entrepreneurial nature has been considered by the Board on many occasions. The test which has been applied by the Board is the four-fold test suggested by Lord Wright in Montreal v. Montreal Locomotive Works Limited [1947] 1 D.L.R. 161: "(1) control; (2) ownership of the tools; (3) change of profit; (4) risk of loss." In many cases the question can only be settled by examining the whole of the various elements which constitute the relationship between the parties.

8. The respondent appears to exercise very little control over Mr. Reid who uses his own tools. However, there was no evidence before the Board on the nature or number of tools used by Mr. Reid. The installation of the units appears to be a routine matter and it may not be said that there is any "chance" in the profit which Mr. Reid makes from his labours. Indeed, the payments which he receives from the respondent are not, in our view, "profits" in the commercial sense of that word but are rather wages based upon an incentive work scheme as opposed to an hourly rate for the job. Similarly, there is no risk of loss to Mr. Reid. In viewing the entire relationship between Mr. Reid and the respondent, the Board finds that he is an employee of the respondent. The fact that the respondent has neither deducted income tax nor paid unemployment insurance with respect to Mr. Reid does not establish the non-existence of an employer-employee relationship between the respondent and Mr. Reid. The fact that laws may have been contravened in this case does not destroy the employer-employee relationship between the respondent and Mr. Reid.

. . .

12. A certificate will issue to the applicant.

6390-74-R: BURFORD SHEET METAL PRODUCTS LTD. (Applicant) v. Sheet Metal Workers' International Association, Local 540 (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Murray E. Kitchen for the applicant; R.V. Betteridge for the respondent.

DECISION OF THE BOARD: October 7, 1974.

1. This is an application for a declaration terminating bargaining rights.

2. Section 49 of The Labour Relations Act reads in part:

49.-(1) If a trade union does not make a collective agreement with the employer within one year after its certification, any of the employees in the bargaining unit determined in the certificate may, subject to section 53, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit.

(2) Any of the employees in the bargaining unit defined in a collective agreement may, subject to section 53, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,

(a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last two months of its operation;

(b) in the case of a collective agreement for a term of more than three years, only after the commencement of the thirty-fifth month of its operation and before the commencement of the

thirty-seventh month of its operation and during the two month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last two months of its operation, as the case may be;

- (c) in the case of a collective agreement referred to in clause a or b that provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, only during the last two months of each year that it so continues to operate or after the commencement of the last two months of its operation, as the case may be.

3. It is of note that section 49 permits only employees to bring an application for termination before the Board under this section and such an application must be timely within the meaning of section 53.

4. This application is brought by an employer and an employer can only bring such an application under sections 50, 51 and 52 of the Act. These sections read in part:

50. If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the bargaining unit and, upon the making of such a declaration, the trade union is not entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, the collective agreement is void.

51.-(1) If a trade union fails to give the employer notice under section 13 within sixty days following certification or if it fails to give notice under section 45 and no such notice is given by the employer, the Board may, upon the application of the employer or of any of

the employees in the bargaining unit, and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit.

(2) Where a trade union that has given notice under section 13 or section 45 or that has received notice under section 45 fails to commence to bargain within sixty days from the giving of the notice or, after having commenced to bargain but before the Minister has appointed a conciliation officer or mediator, allows a period of sixty days to elapse during which it has not sought to bargain, the Board may, upon the application of the employer or of any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit.

52.-(1) Where an employer and a trade union that has not been certified as the bargaining agent for a bargaining unit of employees of the employer enter into a collective agreement, or a recognition agreement as provided for in subsection 3 of section 15, the Board may, upon the application of any employee in the bargaining unit, during the first year of the period of time that the first collective agreement between them is in operation or, if no collective agreement has been entered into, within one year from the signing of such recognition agreement, declare that the trade union was not, the time the agreement was entered into, entitled to represent the employees in the bargaining unit.

5. In the facts at hand, a collective agreement with an expiry date in October 1974 or thereabouts exists between the applicant and the respondent. But the agreement now applies to only two employees in the shop - one who is about to retire and another who does not want to belong to the union. Moreover both the union and the company as well as the employees no longer see the need for the union in these circumstances. In fact, the applicant told the Board that this application had the blessing of the two employees.

6. But be all this as it may, the Board has no jurisdiction to terminate the bargaining rights of the respondent under section 49

because that section applies only to employees (Burns and Company Ltd. (1961) 61 CLLC ¶16,213; East Mall IGA [1971] OLRB Rep. 474) and because of the existence of the collective agreement it is premature to apply section 51 (sections 50 and 51 are inapplicable).

7. It may be that with the consent of the employees, the trade union and the employer the Board could exercise its powers under section 95(1) and revoke the original certificate granted by decision to the respondent. However, it is unclear that this could be done where a collective agreement exists (section 95(1) says nothing about an agreement) and given the specific language of section 49(6) (the only section to deal with the affect of a termination upon an existing collective agreement). Moreover, the employees were not before the Board and it is a nice question whether this Board can countenance an employer "talking" this issue over with its employees; (see Albert E. Hagell (1949), 49 CLLC ¶17,007; The Canadian Linen Supply (Ont.) Ltd. (1971) OLRB Rep. 757) although the facts before us today reflect genuine good faith and understanding.

8. Therefore even if the Board is obligated to apply section 95(1) in termination applications (see R v OLRB, ex parte Genaire Ltd. (1958), 14 D.L.R. (2d) 201 (Ont. H.C.), aff'd (1958), 18 D.L.R. (2d) 588 (Ont. C.A.)) we do not believe that these circumstances are appropriate. Accordingly, the application is dismissed.

9. However, we would note that if these parties want to terminate their relationship they do not need the approval of the Board but can simply act in accord with such an understanding. In fact this understanding could be set down in writing and signed by all concerned.

6039-74-U: Daniel Foisy (Complainant) v. RICHARD PROCTOR (Respondent).

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

DECISION OF THE BOARD: October 8, 1974.

1. This is a complaint filed under the provisions of section 79 of The Labour Relations Act wherein the complainant alleges that he has been dealt with by the respondent contrary to the provisions of section 60 of the said Act.

2. The evidence discloses that the complainant was engaged as a carpenter for approximately six weeks by C.A. Pitts General Contractor Limited (hereinafter referred to as Pitts) on a work project located at Arnprior prior to his lay off on June 25, 1974. According to Foisy, he was elected as steward by the other carpenters working at the project a

few days after commencing employment and that he had made, in this capacity on behalf of these employees various representations to Pitts with respect to various terms of employment and working conditions. The position of the respondent Richard Proctor, the business representative of the bargaining agent on the site, namely the United Brotherhood of Carpenters & Joiners of America, Local Union No. 1988, is that at no time did Foisy act in the capacity of "official steward" and that at all relevant times he merely functioned as an "assistant steward" a position which was not recognized by Pitts.

3. The evidence as adduced in this regard is confusing and in some respects is contradictory. However, having carefully reviewed the evidence, we are nevertheless satisfied that effective April 23, 1973, Stephen Heggart (now President of the local union) effectively functioned in the capacity of "official steward" with respect to the carpenters until June 3, 1974, at which time he was replaced by Kenneth Rogers. Further, although we find some merit in Foisy's argument that his alleged mode of appointment as conducted by a vote of the carpenters engaged at the site, was legally permissible, having regard to the specific provisions of section 29 of the by-laws of the local union (Exhibit #2) and section 59 of its International Constitution (Exhibit #3) and that he had purported to act in the capacity of official steward, we find that this position at the relevant times had been in fact occupied by Heggart and formally recognized as such by Pitts through D. Flynn, its manager of Labour Relations. In these circumstances, therefore, we are not prepared to entertain Foisy's request that he be reinstated by the respondent in the capacity of "official steward".

4. At the initial hearing of this matter on August 16, 1974, Foisy indicated that he was not authorized to make representations on behalf of the "carpenter employees and ex-carpenter employees" of Pitts engaged at the site. In these circumstances, the only remaining issue therefore to be decided by the Board is with respect to Foisy's request for compensation from the respondent for loss of earnings sustained as the result of the complainant's lay-off by Pitts on June 25, 1974, due to a shortage of work. It is the complainant's submission that "permit men" employed on the project from outside the geographical location of the local union should have been laid off first and that the respondent in failing to process the matter through to arbitration had failed in its duty of fair representation owed him pursuant to the provisions of section 60 of the Act.

5. The relevant evidence as adduced in this regard discloses that after reporting the matter to Rogers and not receiving any relief in his request to be recalled, Foisy mounted a "one-man" picket line at the main entrance to the site at the start of the shift on the morning of June 26. This took the form of displaying a placard bearing words indicating that Pitts' actions in laying him off were unfair. Foisy's

activities in this regard culminated in the refusal of the carpenters to enter the site and instead they congregated in the parking lot nearby. At approximately 9:00 a.m. Foisy was approached by Heggart and Rogers to cease picketing. Foisy however remained adamant in his position that he would continue to picket until he was reinstated and it was at this time that he presented them with a handwritten list of six demands for presentation to Pitts with respect to certain items relating to safety, jurisdictional disputes, and remuneration of the employees (Exhibit #7). The appendix to this document reads: "When this agreement is signed by Jack Newell (e.g. the Project Manager), I will hereby agree to lift my picket."

6. The evidence further discloses that the Pitts officials refused to negotiate with Foisy personally on any of these matters and at the meeting with the union representatives called later that afternoon, they took the position that unless the union representatives took active steps in preventing Foisy from further picketing the project, Pitts would be seeking redress from the union for any damages sustained, as a result of any stoppage of work. It would appear that the company was contemplating a further lay-off to take effect the following Friday and it was agreed, in Foisy's absence, between Proctor and Flynn that Foisy's layoff would not take effect until that time provided that he removed his picket from the site. In other words, Foisy was not to be recalled but instead would receive two extra days' pay. It is clear however that when these arrangements were explained to Foisy, he refused to comply and continued to picket the site at the commencement of the shift on the following morning. However his efforts on this occasion did not prevent the carpenters from going into work and despite his refusal to accept the compromise settlement as reached between Proctor and Flynn, Foisy nevertheless accepted payment for the extra two days.

7. It is clear that the terms of settlement reached in the face of the work stoppage of the carpenters were discussed and accepted by the members present at a general membership meeting of the local union called in Arnprior on the evening of Friday, June 28. Foisy was in attendance. It would appear however that Foisy did not take advantage of the opportunity to present his views to the members at this time.

8. Although we are not required in these proceedings to decide the merits of Foisy's claim that he had been improperly laid off on June 25, the evidence clearly establishes that he was in fact the last man hired by Pitts in his particular gang and that it was not the policy of the company in regard to lay-offs to give first consideration to the "permit men".

9. Having therefore carefully reviewed the totality of the evidence and in particular having regard to our findings of fact as set out herein, we are not satisfied that the respondent has represented Foisy in a manner

that was "arbitrary, discriminatory or in bad faith" contrary to the provisions of Section 60 of the Act and this complaint is accordingly dismissed.

6494-74-U: MOBIL PAINT COMPANY (Applicant) v. Those persons named in Schedule "A" of this application (Respondents).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: D. Churchill-Smith and J. McWha for the applicant; H. F. Caley for the respondents.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL: October 10, 1974.

1. This is an application for a declaration that a strike engaged in on Saturday, September 21, 1974, by thirty-five named employees of the applicant, is unlawful.
2. The relevant events leading up to this application, we find to be as follows: The applicant and the United Steelworkers of America, Local Union No. 14049 (hereinafter referred to as the union) are parties to a collective agreement encompassing approximately forty-five employees. This agreement bears a termination date of October 31, 1974. On July 15, 1974, the parties commenced formal negotiations towards the renewal of the said agreement. Seven negotiation meetings have been held in this regard, the last of which was held on September 4. On September 10, the union applied for conciliation and it is in this setting that the Board entertained the evidence and representations of the parties as adduced before us on September 26, and October 1.
3. The uncontradicted evidence as adduced through John McWha, the respondent's operations and plant manager, is to the effect that beginning in early September of 1974, the respondent began to experience a heavy back-log in customer orders. However, his minimum manpower request for eight persons to work overtime on September 9 resulted in only two persons voluntarily agreeing to work at this time. On September 10, his minimum request was for twelve persons in this regard but only seven persons worked the overtime. His overtime request for September 11 for five persons was initially met by two persons agreeing to work. However, these persons subsequently retracted their agreement following a meeting of the employee in the cafeteria later that day. On September 12, Mr. McWha stated that his overtime manpower requirement was for nine persons. Again no employee agreed to work the overtime. When this situation became apparent to Mr. McWha late that afternoon, he then sent a telegram and registered letter (Exhibit #4) to Mr. Robinson, the International Representative demanding

an immediate resolution of this matter. Mr. McWha further testified that he sensed a trend developing at this time and when on September 13 his foremen reported back to him that there was a complete refusal by the employees to work overtime on the following Saturday, September 14, he personally went to each employee to ascertain their reasons for refusal. The replies he received in this regard were for the most part based on personal reasons such as planned shopping trips, etc. When he approached Mr. Chaykowsky, the local president and member of the negotiating committee, in this regard, he (Chaykowsky) would give no reason for his refusal and stated that further, he would not work overtime again. Although Mr. Missios, another member of the negotiating committee, agreed to work the overtime at this time, he nevertheless failed to show up for work on September 14. Mr. McWha testified that at approximately 2:00 p.m. on September 13 he then decided that it was necessary that overtime be mandatorily assigned for the Saturday in order that the company meet its commitments to its customers. At about 3:30 p.m. he met with Mr. Robinson and the plant committee at which time he rejected their proposal that certain members of the committee would approach the employees with respect to obtaining volunteers for the next day. Of the eight junior employees specifically instructed by Mr. McWha to work, five employees reported for work on Saturday, September 14. Overtime work was then scheduled for the following Monday, September 16, requiring a minimum complement of five employees. When his foremen advised him that there had been a 100% refusal on the part of the employees in all of the departments, Mr. McWha stated that he then followed the same procedure he had utilized on September 13 and he then proceeded to interview each of the employees concerning their reasons for refusal. The reasons given, he found were similar to those given on the prior occasion. Nevertheless he was successful in obtaining two volunteers at this time. Overtime was scheduled for the next day September 17 requiring a minimum complement of two employees and again Mr. McWha was faced with a complete refusal on the part of the employees. When he again approached them individually he was given similar reasons to those given on the prior occasions. In any event, he was unsuccessful in getting any of the employees to agree to work the overtime scheduled for Tuesday September 17.

4. Mr. McWha further testified that as of September 18, his problems with respect to obtaining overtime became critical. Accordingly, on Thursday, September 19, he caused the following Notice (Exhibit #2) to be posted upon the plant premises.

"OVERTIME SCHEDULE

Saturday, September 21, 1974

A serious backlog of orders has arisen as a result of our inability to meet production needs, therefore it will be necessary for all departments

to work a regular schedule of 8.00 a.m. to 4.30 p.m. on Saturday, September 21st, 1974.

All hourly employees will be required to work the scheduled overtime hours on Saturday, September 21st unless excused in advance by their supervisor."

5. On the morning of Friday, September 20, Mr. Chaykowski in the company of Mr. Surch, an alternate member of the negotiating committee, approached Mr. McWha with respect to the propriety of this notice. Again Mr. Chaykowski expressed an unwillingness to work overtime but his request to be excused for the following Saturday was rejected by Mr. McWha. Later that morning Mr. Chaykowski was given permission to meet with the committee. Mr. McWha subsequently agreed to meet with the committee at 3:00 p.m. at which time he was presented with a petition signed by all of the named employee-respondents. The heading of that document reads as follows: "We the undersigned do not wish to work any compulsory overtime at any time."

6. It was during the course of this meeting that Mr. McWha flatly rejected the committee's request that he retract the notice of the previous day requiring compulsory overtime for Saturday, September 21. He explained to them that several thousands of gallons of production were required to satisfy overdue orders. The committee requested that it be permitted to canvass for volunteers but in view of the fact that it could not guarantee a full work force Mr. McWha in the light of his prior experience in this regard, rejected this idea. It was at this point that Mr. Surch questioned whether the union's demand at negotiations for a Cost of Living Allowance was not as equally important as the question concerning overtime. Mr. McWha then took the position that the "Cola" issue was a matter presently at the conciliation stage of negotiations and that it had no bearing to matters at hand. In this connection, we note that the subject of voluntary overtime has been incorporated in the union's demands in both the present and previous sets of negotiations with the applicant. This meeting ended at 3:50 p.m. and it was shortly thereafter that Mr. McWha observed an "x" scrawled across the notice (Exhibit #2) posted on the bulletin board. It was immediately replaced by a "clean" notice. After the employees had clocked out at 4:30 p.m. Mr. McWha observed that the vast majority of them thereupon congregated at the parking lot. Although he could not hear the contents of the short discussion which then ensued, he stated that this was followed by a show of hands whereupon the employees then proceeded to leave the premises. Although none of the named respondents were excused from work for Saturday, September 21, not one of these employees reported in that morning.

7. In all of these circumstances, the Board is prepared to draw the conclusion that there was a concerted refusal on the part of the

named respondents to work the overtime scheduled for Saturday, September 21. In this regard, we find that the applicant has an established practice of allotting overtime upon a voluntary basis to the employee in the department with the least amount of overtime. Should such an employee fail to exercise this option, the opportunity for overtime is extended department-wide and failing acceptance, it is then offered on a plant-wide basis. Generally speaking, prior to August of 1974, the applicant received the co-operation of the employees in this regard. However failing acceptance at this point, it would appear that the mandatory provisions of Article VI Section 5 of the collective agreement come into play with respect to overtime. Having regard to the evidence as adduced, we are also satisfied that the requirement for overtime at all relevant times was urgent and that it was occasioned by the heavy demand for the applicant's products by its customers during its normally busy period. Further, there is absolutely no evidence whatsoever before us to substantiate the allegations made by counsel for the respondents to the effect that such overtime was utilized by the applicant (or for that matter, by one of its major customers) for the purpose of stockpiling its products in anticipation of a strike.

8. Counsel for the respondents further argued that the Board in interpreting the terms of the collective agreement would be usurping the functions of the arbitrator as constituted therein. In this regard, however, we are satisfied having regard to the principles as set out in the Harding Carpenters Limited case 56 CLLC 1564 and 18,031 and the Beaver Shirt and Sportswear case OLRB M.R. July, 1964, p. 187, that the concurrent remedy by way of a declaration pursuant to the provisions of section 82 of the Act is available to the applicant in the particular circumstances of this case.

9. The term "strike" is defined in Section 1(1)(m) of the Act as follows:

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output;"

Having regard therefore to all of the circumstances and taking into account the principles as set out in the Hydro Electric Power Commission of Ontario Case OLRB M.R. May, 1969, p. 249 at page 256, and to the other cases cited therein, we find that the concerted refusal by the thirty-five named respondents to work overtime scheduled for Saturday, September 21, 1974, constituted an unlawful strike, contrary to the provisions of Section 63 of The Labour Relations Act and we so declare.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: October 10, 1974.

The essential facts in this case are set out in the decision of the majority and are not in dispute.

This matter initially came on for hearing by the Board on September 26, 1974. At that time the parties agreed to an adjournment of the matter to a later date to be set by the Board's Registrar. As a condition of the agreement of the parties to the adjournment was an undertaking by the respondents that they would co-operate with the applicant in the matter of encouraging the employees to work overtime.

At the second hearing by the Board on October 1, 1974, the matter of the alleged refusal to work overtime was not a continuing situation at that time.

Assuming, but without deciding that a refusal by the respondent employees to work overtime in excess of their regularly scheduled 40 hour work week constitutes an unlawful strike, the question arises as to whether, in the circumstances in this case, the Board should exercise its discretion and issue such a declaration.

The circumstances in which a declaration should issue under Section 63 of The Labour Relations Act have been considered in a number of past decisions of the Board. In the Ball Brothers Case, (1957) CCH Canadian Labour Law Reporter, Transfer Binder, 1955-59, ¶16,091, it was said that:

"The Board has generally held a declaration should not be issued in cases in which the strike has been settled before the application came on for hearing."

I am satisfied that the circumstances in the instant case are very close to that in the Ball Brothers Case and I am not satisfied that the applicant has established a case which would warrant the issuing of a declaration under Section 63 of the Ontario Labour Relations Act. I would therefore dismiss this application.

6182-74-M: Building Service Employees, Local 478 (Applicant) v. KIRK-LAND AND DISTRICT HOSPITAL (Respondent).

BEFORE: D.H. Kates, Vice-Chairman, and Board Members P. J. O'Keefe and F. W. Murray.

DECISION OF THE BOARD: October 15, 1974.

1. This is an application under section 95(2) of the Act wherein a question has arisen during the course of bargaining for a collective agreement as to whether Messrs. Ernest Caldwell and Oliver Genovese are security guards within the meaning of section 11 of the Act.

2. It appears that the circumstances giving rise to the instant application may bear some relevance to the disposition of the instant application. As a result of a Board decision dated March 26, 1974, the applicant was certified as bargaining agent for a group of service employees at the respondent's hospital at Kirkland Lake. During the course of those proceedings the Board acceded to the agreement of the parties and excluded Messrs. James O'Donnell and Albert Whittle from the appropriate unit in that they performed security guard functions within the meaning of the Act. When the parties engaged in bargaining with a view to entering a collective agreement a question arose with respect to the status of the persons named herein as security guards. Neither Mr. Caldwell nor Mr. Genovese appeared on the respondent's schedules filed in the certification proceedings. Nevertheless it is admitted that indeed both individuals perform the same duties and responsibilities as the two persons excluded from the bargaining unit in the certification application. More particularly the Examiner's Report indicates the applicant's position by the following remarks (Examiner's Report page 29;)

"As far as the applicant is concerned, we will accept the evidence for one (Mr. Caldwell) as the evidence for four of the four people involved because in fact the evidence is that the work is completely identical and interchangeable one with the other and I can't see how you can segregate two and not the other two."

3. The respondent argues that on the basis of the above information, the applicant is bound by its admission that the two persons challenged herein perform the same duties and responsibilities as those persons excluded from the unit in the certification proceedings "for reasons provided under section 11 of the Act." (see; The Kirkland and District Hospital Case File No. 5176-73-R).

4. The Board during the course of a certification proceeding accedes to the agreement of the parties with respect to resolving the list of employees on the assumption that the parties are acting responsibly and in the best interests of their respective positions. The Board's only concern when faced with an agreement is that it be based on reasons within our jurisdiction under the Act. We therefore as a matter of practice, require the parties when agreements are submitted to indicate the basis of their agreement. The Board's acceptance of the agreement is based on its jurisdiction to do so and is unaffected by any evidence underlying

the agreement. Indeed, the Board assumes that the parties have addressed themselves to the evidence and in good faith have reached a conclusion motivated by their comprehension of the facts. It does not follow however that the Board in subsequent cases of a similar or identical nature will be bound by the past agreement of the parties. In other words, there is minimal precedent value attached by this Board to situations resolved by agreement of the parties.

5. It does not follow however that in certification proceedings where parties have agreed to the list of employees that the Board will permit a party to unilaterally withdraw therefrom (see; Fonthill Lumber Ltd. Case 64 CLLC ¶16,305). In this regard, the applicant would be estopped from denying that the two persons excluded from the bargaining unit under section 11 in the certification proceedings were security guards. Nor would the Board permit the applicant to withdraw from its agreement in the certification proceeding through the vehicle of an application under section 95(2) with respect to the disputed status of persons or guards for purposes of the Act. (see; The F. J. Davey Home for the Aged Case OLRB M.R. August 1974 558). In other words, the list of employees as agreed to by the parties in the certification proceedings is irrevocably fixed.

6. The situation before the Board however pertains to the disputed status of persons as guards under the Act whose names did not appear on the schedules filed by the respondent herein in the certification proceedings. We are satisfied, therefore, that the applicant is not bound by its agreement in this proceeding to the agreement on the lists in the certification case. Indeed, the applicant in this case admits at the end of the examiner's inquiry that the duties of the persons under dispute are identical and inter-changeable with those subject to the past agreement of the parties. The only inference that the Board is permitted to draw from this statement with respect to the disposition of this application is that the parties may have been right or wrong in the certification proceeding. In absence of a like agreement of the parties in these proceedings the Board is duty bound to apply the evidence as contained in the examiner's report to the relevant provisions of the Act. Indeed, for this Board to address itself to the past agreement of the parties in lieu of section 11 of the Act would be a denial of jurisdiction reviewable by a court of superior jurisdiction. (see; The Metropolitan Life Insurance Case 70 CLLC ¶14,008 [SCC]).

7 The Board therefore proposes to deal with the issue as heretofore cited. We note the agreement of the parties to treat the evidence of Mr. Caldwell as representative of the disputed persons referred to in paragraph 1 herein.

8. The Board, having regard to the evidence contained in the examiner's report, is satisfied that neither Mr. Caldwell nor Mr. Genovese exercise the type of monitorial or admonitory authority over

other employees in the respondent's employ to raise a potential conflict between their duties as watchmen and their loyalties to fellow employees. (see; the Disposal Services Ltd. Case OLRB M.R. February 1974, 84; The George A. Crain & Sons Ltd. Case 63 CLLC ¶16,291 at p. 1211). The Board therefore finds that Messrs. Caldwell and Genovese are not security guards within the meaning of section 11 of the Act.

4738-73-U: United Radio Electrical and Machine Workers of America (Complainant) v. BEAVER ELECTRONICS LIMITED (Respondent).

BEFORE: D.H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and P.J. O'Keefe.

DECISION OF THE BOARD: October 17, 1974.

1. This is an application under section 95(1) for reconsideration of the Board's decision finding that the respondent had violated the provisions of Section 70(2) of the Act.

2. In paragraph 6 of the Board's original decision, the majority adopted the reasons of the panel of the Board in The Ottawa General Hospital Case OLRB M.R. June 1972, 681 whereby it ruled that the word "rights" in subsection (2) of section 70 subsumed the phrase "rates of wages or other terms and conditions of employment" for purposes of assuming jurisdiction to entertain the application.

3. After the close of the hearing on January 25, 1974, a decision on The Provincial Court, Criminal Division dated October 16, 1973, was brought to the Board's attention. (see; Peter O'Dowd on behalf of Her Majesty vs Labatt's Ontario Breweries Limited). In that decision His Honour Judge Dneiper refused to follow the Board's reasoning in The Ottawa General Hospital Case and determined that his court was without jurisdiction to process any information alleging a violation of section 70(2). The Board at that time did not feel compelled to follow the reasoning of the learned judge and proceeded to issue its decision accordingly.

4. In support of its application for reconsideration counsel for the respondent cites a decision dated January 12, 1974, of Mr. Justice Callon upholding the Provincial Court decision on appeal by stated case. More particularly, the order of the learned judge reads;

"It is ordered that the question propounded in the stated case be and it is hereby answered in the negative and that the appeal be and it is hereby dismissed with no order as to costs."

5. In resolving this rather difficult dilemma the Board is of the opinion that in order to accede to the respondent's request it would be endorsing a process of appeal that circumvents section 95(1) and section 97 of the Act which read as follows;

"S95(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling."

"S97 No decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings."

6. The appropriate forum to quash a Board decision is by way of an application for judicial review to The Divisional Court. (see; The Judicial Review Procedure Act S.O. 1971 c. 48, S2). In accordance with that procedure the Board files the whole record of its proceedings and argument is extended to all interested parties with respect to the issues of the competence of a Board decision. Indeed, the Board has stated in The Knight Security Guard Case OLRB M.R. June 1970, 377 the following with respect to our responsibility to obey only an order of the appropriate forum in dealing with applications for reconsideration supported by judicial utterances (at p. 381)1

"15. As can be seen from the above, the Courts have not found that the Board has wrongfully exercised its jurisdiction which would entitle the Courts to review the Board's decisions in this case. The Board does not deem it advisable to consider the Court's remarks to be judicial directions in the instant case. If the Board were to decide otherwise, the Board would be acting contrary to the spirit and intent of Section 80 (now Section 97) by conferring

jurisdiction to the courts which Section 80 (now section 97) clearly prohibits. In addition, to do so might place the Board in the position of attaching significance to the Courts' remarks, which the Courts did not intend.

16. If the Board were to accede to the applicant's request the Board would thereby give to the parties indirectly a right of appeal to or review by the courts which is prohibited by Section 80 (now Section 97). Since the Act expressly prohibits review by the Courts, the Board ought not to circumvent the spirit and intent of section 79(1) (now section 95(1) and section 80 (now section 97) of the Act by cooperating with a party in order to enable that party to do indirectly what the party is prohibited from doing directly."

7. In light of the above and although the respondent's case was very ably put forward and forcibly argued, we are unable to find any compelling reason to cause us to vary or revoke our decision in this matter especially in view of the provisions of section 95(1) and section 97 of the Act. Accordingly, the application is denied.

DECISION OF BOARD MEMBER H.J.F. ADE: October 17, 1974.

1. I dissent. I would have followed the reasoning adopted by His Honour Judge J. B. Dneiper in his unreported decision dated October 16, 1973, in Her Majesty The Queen v. Labatt's Ontario Breweries Limited and as confirmed by The Honourable Mr. Justice Callon in an unreported decision dated January 17, 1974.

2. The majority, in its decision dated March 4, 1974, arrived at its conclusion as the result of an error of law in interpreting section 70(2) of The Labour Relations Act. I say "error of law" advisedly because well before March 4, 1974, the law of Ontario was determined with reference to section 70(2) by the Supreme Court of Ontario to be contrary to the reasoning of the majority.

3. To deny the respondent's request for reconsideration of the majority's decision dated March 4, 1974, is an unfair sheltering behind the provisions of section 95 and 97 of The Labour Relations Act. Surely, the intent of these two sections is to preserve the integrity of the Board's process. Provided the Board acts within its jurisdiction, there is a measure of immunity from judicial review. However, this protection ought to be exercised judiciously, and with a degree of caution commensurate with the serious responsibility implicit in such immunity.

4. The course of conduct adopted by the Board in the Knight Security Guard case, supra, is an example of an error in law arising (as determined by the Ontario Court of Appeal) after a decision of the Board where the Board had acted within its jurisdiction.

5. In the instant case, the law with respect to the interpretation of section 70(2) under consideration had been determined prior to the decision of the majority on March 4, 1974. Where there is settled law on a point before the Board by a superior court, then the Board does not act judicially when it "reverses" a decision of the Supreme Court of Ontario.

6. Far from circumventing the provisions of section 95(1) of The Labour Relations Act, the respondent is asking for reconsideration pursuant to that subsection. This route of requesting reconsideration is open to the respondent and I strongly disagree with the remarks of the majority in the first sentence of paragraph six. It is true that a decision of the Board may be reviewed in the Divisional Court. However, there is the underlying premise in that sentence that the decision of the majority ought to be quashed. In this case, why not a reconsideration by the majority?

7. The majority decision makes no pretense that its decision is correct in law. Since the majority, has erred in law, my colleagues should redress the wrong done to the respondent and reconsider and revoke their decision dated March 4, 1974, instead of writing an apologia in defence of error.

8. Finally, I ask two questions: (1) Why is it necessary to correct a manifest wrong in the Divisional Court when it may be corrected now on a request for reconsideration? (2) On what reasoning is the cost of a judicial review application to be imposed on the respondent in the circumstances of this complaint?

5765-74-R: International Union, United Plant Guard Workers of America, Local 1962 (Applicant) v. THE ONTARIO JOCKEY CLUB (Respondent).

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: C. G. Paliare, W. E. Cook and R. C. Hildebrandt for the applicant; P. D. Isbister and R. D. Midgley for the respondent.

DECISION OF THE BOARD: October 18, 1974.

1. Pursuant to the decision of the Board dated June 11, 1974, the

Examiner convened a meeting of the parties in this matter with respect to the duties and responsibilities of those persons classified by the respondent as "Gate Supervisor" and "Gateman". During the course of this meeting, the Examiner had occasion to also inquire into the duties and responsibilities of certain persons classified by the respondent as "Watchman". This meeting culminated in the report of the Examiner herein dated August 12, 1974.

. . .

4. It is the submission of the respondent that the persons included in the above two classifications are not guards within the meaning of Section 11 of The Labour Relations Act. The applicant on the other hand, maintains that the persons encompassed in both of these classifications perform identical job functions and that there is a sufficient interchange between these persons and the group of employees classified as "Mutuel Guards" and "Security Officers" whom the respondent have not challenged for purposes of Section 11 of the Act, to warrant their inclusion in the proposed bargaining unit. It would appear that the respondent does not dispute the applicant's position that the group of persons encompassed under the classifications of "Gate Supervisor" and "Gateman" perform essentially similar functions. However, the respondent asserts that the activities of these persons are restricted to the control and direction of the traffic flow with respect to the people entering the area. In other words, it is alleged that these persons essentially perform the functions of an usher and as such they exercise no monitorial control over the other employees of the respondent.

5. The evidence discloses that although both groups of employees wear a distinctive type of uniform, the "Gate Supervisors" and "Gatemen" wear a grey uniform in contrast to the "Mutuel Guards" and "Security Officers" who are outfitted in blue. It would appear however that the identification cards issued to the "grey" group under the auspices of the Ontario Racing Commission describe their classification as "Security". Further, their immediate supervision is common with the employees in the "blue" group and it would appear that neither group is primarily engaged in work of an investigative nature.

6. The specific evidence with respect to the "Gatemen" further discloses that they report in for work at the same area as the "blue" group. Duffy's evidence with respect to interchange suggests that he has been required to temporarily fill in for the "Mutuel Guards" or "Security Officers" in the area of the Elevator, Messenger Service and Mutuel booths on approximately eight occasions. He also stated that the duties associated with pedestrian traffic in the paddock area are shared with the "blue" group. King's evidence with respect to the "Gate Supervisors" is to the effect that he has had occasion to observe persons in the "grey" group substituting for those in the "blue" group when the

latter were short-handed. He also stated that he is responsible for the persons coming through his gate and that he has the authority to restrict their entrance. In this connection, he stated that employees coming through his gate show their identification and generally submit to a voluntary examination of any articles being brought out of the premises.

7. Counsel for the respondent, conceded that there existed some interchange of functions between these two groups and that in certain limited areas the employees in the "grey" group have in fact functioned as guards. Nevertheless, he stressed that the respondent was not "job classification" conscious at the time of making these assignments and that more attention would be devoted to the lines of demarcation of these functions in the future. However, as this Board has often indicated, the Board is primarily concerned with matters in existence as of the date of the application and it will not generally speculate upon the occurrence of future events which may or may not transpire. In this regard, see for example the Brockville General Hospital case OLRB M.R. January 1967, p. 776; Sydenham District Hospital Case OLRB M.R. May 1967, p. 135; Mobile Cartage and Distributors Ltd. Case OLRB M.R. November 1968, p. 814; Libby McNeil and Libby of Canada Ltd. case OLRB M.R. October 1970, p. 781; Anthes Equipment Limited Case (Board File No. 1045-71-R) and The Corporation of the Township of Black River-Matheson Case (Board File No. 1413-71-R). Having therefore carefully reviewed the circumstances as set out above and taking into account the nature of the evidence as adduced, we are satisfied that the functions performed by the employees in the "grey" group are sufficiently interwoven with those performed by the employees in the "blue" group so as to warrant our finding that the "Gatemen" and "Gate Supervisors" are guards within the meaning of section 11 of the Act.

8. Accordingly, the Registrar is directed to unseal the ballot box, to place the segregated ballots cast by the employees of the respondent classified as "Gatemen" and "Gate Supervisors" in the ballot box with the remaining ballots and to proceed with the counting of the ballots contained therein. For the reasons as set out in the decision of the Board in Board File No. 5766-74-R, the Registrar is further directed to disregard for purposes of the count, any segregated ballots cast by employees of the respondent classified as "Watchmen" as these persons, we find, are not eligible to participate in the vote.

6325-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. GENERAL CRANE INDUSTRIES LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and P. J. O'Keefe.

DECISION OF THE BOARD:

October 18, 1974.

1. This is an application for reconsideration of a Board decision certifying the applicant as bargaining agent for a group of the respondent's employees.

2. Counsel for the group of objectors alleges that the Board neglected to take into consideration the objections filed by his clients by way of petition signed by themselves and seventy-seven other objectors which signatures were purportedly obtained off the premises and not during working hours. Indeed, counsel disputes the Board's conclusion that the petition was tainted and urges that proper weight be conferred to the document by directing a representation vote.

3. Prior to dealing with this allegation, the Board proposes to outline the evidence and the circumstances giving rise to the Board's decision to set aside the petition. The Registrar received a letter on September 6, 1974, from Mr. John Jeffrey containing documents signed by seventy-nine persons indicating opposition to representation by the applicant trade union.

4. At the hearing on September 13, 1974, the Board in the ordinary course determined the appropriate bargaining unit and settled the lists of employees. Once these matters were disposed of it appeared that the documents filed in opposition to the application, if given credence, would cast doubt on the applicant's evidence of membership justifying an order directing a representation vote. The Board therefore, proceeded to entertain evidence of the representatives for the group of objectors with respect to the origination and circulation of the petitions.

5. Mr. John Jeffrey stated that he was employed by the respondent in its welding assembly department when first hired in September, 1973. He has since been promoted to the position of "lead hand" with authority "to supervise over all sub-assemblies in the plant." He indicated he was one of seven lead hands employed in the respondent's plant and was responsible for approximately eight employees. He told the Board when he learned of the applicant's campaign to organize the respondent's employees, he and two other lead hands (namely, Mr. P. McFarland and Mr. W. Jessome) as well as another employee got together at the home of Jack Carter (another employee) and decided to organize a petition in opposition to the application. Mr. Jeffrey was responsible for preparing the preamble of the petition after the meeting. It was resolved that the six employees would form three teams and would approach employees at their homes. It was indicated and would approach employees at their homes. It was indicated to the Board that the names and addresses of the employees were extracted from the telephone book. Mr. Jeffrey together with Peter McFarland was responsible for securing forty-five of the signatures appearing on the petition. Mr. Jeffrey assured the Board that no member of management was approached with respect to the preparation of the petition.

6. Mr. Anderson, the representative of the applicant, proceeded to cross-examine Mr. Jeffrey with respect to his role in promoting the

petition. It appears that another petition was prepared by the employees in the respondent's employ which was subsequently destroyed because it apparently would not have met with the Board's standards with respect to origination and circulation. When questioned, Mr. Jeffrey recalled that there was a meeting of employees held on August 30, 1974, during the afternoon coffee break. All of the employees at the meeting were addressed by Mr. McFarland on the advantages and disadvantages of joining the trade union. The employees were urged to sign a petition in opposition to the applicant. The employees were also told that a 35¢ - 40¢ per hour wage increase should be expected in the near future. After the meeting a statement of desire was prepared and the signatures of the employees were obtained as they returned to their jobs. Mr. Jeffrey then stated that he was told by some older employees that the petition was tainted in that it was secured on company time and during working hours. The document was therefore destroyed and another document prepared and dispatched as aforesaid to the Board.

7. Mr. Peter McFarland was then called as a witness to the preparation and circulation of the petition. Mr. McFarland is employed as a "lead hand" and is responsible for supervising approximately 10 employees in the respondent's plant. He indicated to the Board that he has recommended promotions and pay increases and is also couched with the power to reprimand employees. Indeed one instance was cited to the Board where he reported an employee for swearing at him in front of twelve other plant employees. Upon receiving the report, Mr. P. Fugina, the plant foreman issued a verbal warning to the effect that swearing at a lead hand was tantamount to swearing at him.

8. Mr. McFarland proceeded to relate to the Board the events of August 30, 1974. It appears that around 12:30 that afternoon Mr. McFarland and Mr. Jeffrey had a meeting wherein plans were made for starting up a petition. Mr. McFarland then proceeded to the offices of Mr. Fugina and Mr. Murray Keyes, the plant superintendent, to request their permission to hold a meeting of employees for the purposes of securing signatures to a petition. During the course of the same day Mr. McFarland overheard the two mention that raises for plant employees would be forthcoming on or about October 1, 1974. Mr. Keyes advised that the meeting be held in the respondent's parking lot during the ten minute coffee break. The meeting once arranged lasted some twenty to thirty minutes. All of the employees were invited to attend the meeting in the parking lot. Mr. McFarland addressed the employees on the advantages or otherwise of representation by the applicant trade union. He also indicated to the employees the conversation he had overheard between Mr. Fugina and Mr. Keyes. The signatures were secured upon the employees returning to work. Afterwards, Mr. McFarland was told by Mr. Jeffrey that the petition was invalid and that they would have to renew their efforts by starting another petition.

9. There were several telling statements made by Mr. McFarland

dispositive of the question of the voluntariness of the petition. He indicated to us that the reason he told the employees of the imminent pay raises was to impress upon them that failure to sign the petition could mean a cancellation of the pay increases. Furthermore, when asked if either Mr. Keyes or Mr. Fugina were aware of his presence while the raises were discussed, he answered that he didn't think so but that he thought that they made certain that their voices were loud enough so he could hear. In another context, Mr. McFarland was asked why Mr. Jeffrey told him that the petition was tainted. He answered that probably Mr. Keyes had made this known. And when asked where he got the list of employees for purposes of renewing the efforts to start another petition, Mr. McFarland admitted that Mr. Ashworth, the personnel director was approached.

10. The Board, in deciding to set aside the petition, observed that throughout the campaign to promote opposition to representation by the applicant trade union employees engaged in a supervisory capacity and who were looked upon by the rank and file as "bosses" were actively engaged in the initiation, and circulation of the statement of desire. Indeed with respect to the signatures secured by Messrs. Jeffrey and McFarland it is noted that their names appear immediately below the preamble to the document. We have no difficulty in concluding that employees approached to sign the document would be influenced by the active participation of these "lead hands" to the extent that their signatures would not reflect their true and voluntary wishes. (see; for example, The Link Manufacturing Ltd. Case OLRB M.R. (1954) File No. 48682-53-R; The Great Atlantic & Pacific Tea Co. Ltd. OLRB M.R. November 1969 947; Becker Milk Company Ltd. case OLRB M.R. April 1966, p. 37; Leamington Vegetable Growers' Co-operative Limited case OLRB M.R. June 1974 402).

11. Aside from this matter however the Board is satisfied that the second petition was dependent upon and interrelated with the first petition. The first petition was destroyed on the objectors own admission that it was procured on company time and on company premises. Indeed, we find that the first petition, based on the facts cited herein, was also subject to management influence and therefore would not reflect the voluntariness of the signatories to the document. In this regard, we note the veiled threat to employees that raises could be withdrawn if employees refused to sign the petition. We also note the help and advice sought and received by Mr. Jeffrey and Mr. McFarland from Mr. Keyes with respect to holding the meeting where the first petition was obtained. And once that petition was destroyed, we note the help extended by Mr. Ashworth of the personnel department with respect to providing a list of employees for the purpose of securing signatures to a second petition. Since the petition filed with the Board was so interrelated and dependent upon the impugned document, the Board had no hesitation at the hearing to set aside the second petition as not being a voluntary reflection of employees desires.

(see; Tri-Sure Products Ltd. Case OLRB M.R. June 1970 324; Weyerhaeuser Canada Ltd. OLRB M.R. February 1964 602; Shelving Displays Limited case OLRB M.R. January 1967 785; Merchant's Paper Company OLRB M.R. April 1965 12; Lakehead Newsprint Limited OLRB M.R. February 1961 397).

12. The Board having regard to the representations of counsel for the group of objectors denies the allegation that the Board neglected to take into consideration the petition filed in opposition to the applicant's application for certification. We therefore deny counsel's request for review of the Board's decision setting aside the petition for the reasons set out in the allegations.

13. We further reject as unworthy counsel's allegation of bias by the Board for a statement made by a Board member at the hearing totally out of context with the issue of the voluntariness of the petition. We note counsel was not present at the original hearing of this matter.

14. The respondent by its letter dated September 30, 1974 filed allegations of impropriety by the applicant in the manner it conducted its organizational campaign. These allegations were repeated in substance by counsel for the group of employees in his letter dated October 3, 1974. Approximately one month has elapsed since the date of the alleged improprieties and the date of the filing of the charges. In addition, no mention of any impropriety against the applicant was raised before this Board by any representative of either the respondent or group of employees at the Board's hearing on September 13, 1974. Counsel for the applicant submits in his representations that the Board dismiss the allegations in that the parties have not complied with the Board's requirements for promptness in notifying the Board of alleged improprieties. Many cases were cited in support of counsel's position; and more particularly the Board's position is elaborately set out in The Fleck Manufacturing Ltd. Case 62 CLLC ¶16,236 at p. 1047;

"It is incumbent on all parties to proceedings before the Board to investigate matters relevant to their cases as early as possible and if they intend to make allegations of improper or irregular conduct against another party to do so promptly. The object of this requirement, which finds expression in section 48 (now section 47) of the rules, is obviously to expedite and facilitate the hearing and processing of applications under the Act and to avoid prejudice, delay or embarrassment to the parties involved. Delayed and last-minute allegations, which lead to adjournments or cause prejudice, embarrassment or unnecessary expense to the other parties, and which with reasonable diligence could have been made at a more timely

stage of the proceedings will not be entertained except for good and sufficient cause."

15. The Board is indeed concerned that the prejudice to collective bargaining envisaged by the Board's requirement for promptness in the filing of charges may very well transpire in this case. Yet, we are duty bound in accordance with our practice to determine whether there exists "good and sufficient cause" for the delay in filing of the allegations of impropriety. We therefore direct the Registrar to list this matter for hearing and the respondent will be required to "show cause" why the Board should entertain the allegations of impropriety filed on September 30, 1974.

16. The Board directs that the parties be prepared to adduce evidence at the hearing to be scheduled in the event the Board decides to entertain the allegations. The Board also directs the parties to section 47(3) of The Board's Rules of Procedure and the requirement for the filing of particulars in support of allegations of impropriety.

5470-74-U: Ward Shellington and Those Persons Named In Schedule "A" Attached Hereto (Complainants) v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED, TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323, CHARLES HILL, ALEXANDER JACKSON, SYDNEY HARKER, JOHN WYND, ALBERT BATTELL, ANSTRUTHER WILLIAMSON, GEORGE JONES, HARVEY STEWART, LESLIE COOK AND BRUCE STARKEY (Respondents).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members P.J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Raymond Koskie and W. Shellington for the complainants; T.F. Storie and M. Hastey for the respondent company; B.A. Dunn and Charles Hill for the respondent union and individuals.

DECISION OF G.W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFFE: October 21, 1974.

1. This hearing arose out of a request, made by the applicant, for the Board to reconsider its decision of July 3, 1974, wherein the Board wrote:

"In these circumstances, provided Mr. Storie's client agrees, the Board is prepared to defer to or await the outcome of arbitration. We say "await the outcome" because 1) if the dispute over the meaning of the collective agreement is not resolved with reasonable promptness by recourse to arbitration; 2) if the arbitration

procedures have not been fair; or 3) if the outcome of arbitration is repugnant to the Act or is remedially inadequate to resolve the applicants' claim under the Act - claims based on a violation of the agreement - we will then hear such complaints in exercise of our jurisdiction. Accordingly, the Board refuses to determine if a breach of a collective agreement occurred but retains jurisdiction over this dispute for these limited purposes set out immediately above."

2. The reason for this ruling was extensively outlined in that decision but it is safe to say that it drew its principal rationale from the peculiar nature of the section 79 complaints brought before the Board. The matter arose out of an alleged unjustified interference with the "seniority rights" of the complainants and, more particularly, was concisely expressed by the complainants at paragraph 7(f) of their complaint as follows:

"During early 1973, the individual respondents conspired with each other to defeat the complainant's accumulated seniority rights and in particular the rights of tradesmen apprentices who successfully completed their apprenticeship with the Company, by seeking to cause the Company to calculate seniority rights from the date an apprentice completes his apprenticeship and becomes a tradesman, rather than "...from the employee's original date of employment." It was agreed to by the individual respondents that their seniority rights and those of the other tradesmen who did not apprentice with the Company before becoming tradesmen, were not to be changed or affected at all."

3. And the relief requested of the Board all related to relief that prevented the respondents from "altering", "changing", "interfering with", "breaching" or "causing or procuring a breach of" the collective agreement between the respondent company and respondent trade union.

4. On the other hand the respondent trade union and company (particularly the trade union) contended that there had been no violation or alteration of the collective agreement but rather, the parties to it

were merely complying with the prevailing practice established under the agreement.

5. A final relevant feature of this case is the apparent existence of a trade union by-law dealing with the origin and powers of a "Trades Committee" established by the trade union - a by-law which reads:

"The tradesmen are to be permitted to set up a trades committee and the trades committee is empowered to deal directly with the company with respect to any matters involving tradesmen. If the result of such discussions affects the operation of the collective bargaining agreement between the union and the company, the general membership must be asked to approve any matters before the same are implemented.

2. In negotiating a renewal of the collective bargaining agreement the tradesmen are entitled to draft their own proposals and to vote on the same without submitting them to a general membership meeting. In negotiations with the company the tradesmen are entitled to speak on their own behalf. Before any agreement is entered into with the company with respect to any matters affecting tradesmen or non-tradesmen, the general membership is reviewed to ratify the whole of any proposed agreement. Prior to any proposals being discussed with the company the tradesmen and non-tradesmen are required to apprise each other of their proposals. There shall only be one set of negotiations with the company at which both the spokesmen for the tradesmen and non-tradesmen shall be present."

6. At the hearing the complainants told the Board that they would establish that in early 1974 the respondent company began to apply lower seniority with regard to the complainants, contrary to their wishes, and that this change in seniority was not allowed to be approved by the general membership in accord with this by-law.

7. Thus the general thrust of the complainants' case was an alleged violation of the existing agreement and the respondents took the position that no violation occurred. Therefore at paragraph 32 of the Board's decision the majority made the following observation:

"The issue then faced the Board is clearly apparent. The crux or essence of the complaints before the Board first requires that a deviation from the terms of the collective agreement be established. Once established the complainants will have to go on and prove that the occurrence of this deviation, in itself or because of requirements in the by-laws of the trade union, places the trade union in violation of section 60. If either or both of these findings are made, the Board will then have to fashion a remedy under section 79. And what might this remedy look like? While the complainants have asked for damages, their main claim appears to be an order directing all of the respondents to refrain from improperly affecting their contractual rights. Even though an arbitrator has no jurisdiction under section 60, would not his declaration as to the meaning of the collective agreement, should it favour the complaints, be tantamount to the same relief? Of course the trade union and the company could then formally amend the collective agreement to accord with the tradesmens' wishes. But this would first place the issue before a general membership meeting which is apparently one of the primary objectives of the applicants."

8. Thus the Board deferred to grievance arbitration subject to the respondent company's agreement to the respondent trade union's proposal to give the complainants a role in both the selection of a sole arbitrator and in the conduct of the arbitration proceedings. At this past hearing before the Board, we were informed that the company had agreed to the proposal, that the parties had jointly selected an arbitrator and that the arbitration hearing was scheduled to occur on October 22, 1974.

9. But now the complainants ask the Board to reconsider its decision to defer to arbitration and to abort the arbitration hearing that has now been scheduled. The reason for this request is based upon an allegation that on September 26, 1974, the respondent company and trade union entered into a new collective agreement "containing a provision which eliminates the accumulated seniority rights of ex-apprentices". It was argued that to enter into such an agreement in the fact of the Board's July 3, 1974 decision was improper and, more importantly, it was said that such an agreement now rendered the arbitration hearing academic.

10. At the close of the hearing the Board dismissed this application and voiced its belief that the scheduled arbitration hearing was in no way an academic exercise. It did so for the following reasons.

11. In rendering its July 3, 1974 decision the Board realized that the company and trade union were in the process of negotiating a new collective agreement. The July 3, 1974 decision makes no mention of these negotiations and it would have been improper to do so. The Board was not asked to decide whether a peculiar seniority provision existing in a collective agreement in some way violated The Labour Relations Act. Rather it was asked to decide whether an alleged violation of a seniority provision contained in a collective agreement under circumstances outlined in the July 3, 1974 decision constituted a violation of The Labour Relations Act.

12. Now the complainants alleged that recent negotiations have amended the collective agreement to accord with the earlier alleged violation of the pre-existing agreement between the parties. But it is of note that this complaint continues to speak of "diminished rights" or of the loss of "vested rights" - rights that presumably accrued from the earlier collective agreement. In other words, even this complaint, centering on the negotiation of a new collective agreement, is based upon an interpretation of the pre-existing collective agreement. Therefore, even if the Board was disposed to entertain the complainants' allegations in regard to this new agreement in the context of their original complaints, the meaning of the pre-existing collective agreement would still be in issue between the parties. Accordingly, the arbitration hearing of October 22, 1974 is no way an academic exercise for these parties.

13. Accordingly, this application for reconsideration is dismissed.

DECISION OF BOARD MEMBER, J.E.C. ROBINSON, Q.C. October 21, 1974.

1. My views of this matter have already been expressed in my dissent of September 13, 1974, and accordingly I do not wish to join with my colleagues in the wording of their decision of October 21, 1974.

2. I am in agreement with their finding, however, that this request for reconsideration be dismissed.

5681-74-R: Ontario Nurses' Association (Applicant) v. TORONTO EAST GENERAL AND ORTHOPAEDIC HOSPITAL INC. (Respondent) v. Service Employees Union, Local 204 (Intervener) v. Group of Employees (Objectors).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members D.B. Archer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Donald F.O. Hersey for the applicant; T.F. Storie and D. Wickenden for the respondent; no one appearing for the intervener; Rosalie Ryan for the objectors.

DECISION OF G.W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER D.B. ARCHER: October 21, 1974.

1. This matter related to a decision of the Board dated June 6, 1974, wherein it appointed an Examiner to inquire into the duties and responsibilities of the assistant head nurses employed by the respondent to assist the Board in determining whether, by reason of exercising managerial functions, they were excluded from the bargaining unit and to a decision of the Board dated August 27, 1974, wherein, based upon the Examiner's report and the representations of the parties, it found that the assistant head nurses neither exercised managerial functions nor were they employed in a confidential capacity in matters relating to labour relations. Accordingly, two certificates were issued to the Ontario Nurses' Association. One, after a representation vote was issued for a part-time unit described as:

"All registered and graduate nurses engaged in a nursing capacity and employed by the Toronto East General and Orthopaedic Hospital Inc., at Toronto, are regularly employed for 24 hours per week or less, save and except assistant departmental supervisors, head nurses, and persons above the rank of assistant department supervisor and head nurse, and nurse in charge of the I.V. Team."

and the second certificate was issued in relation to a full-time employee bargaining unit described as:

"All registered and graduate nurses employed by the Toronto East General and Orthopaedic Hospital Inc. engaged in a nursing capacity, save and except head nurses and those above the rank of head nurse."

2. The need for this subsequent decision arises because of rather unique circumstances surrounding the granting of the full-time certificate. In its decision dated August 27, 1974 the Board ruled that the assistant head nurses were included in the above described full-time bargaining unit but, to ensure that both parties received the certificate as quickly as possible, because of the unique pressures each was experiencing, no elaboration of the Board's reasoning was given in that decision. Rather, the Board notified the parties that its reasoning would be sent out as soon

as possible thereafter. Therefore this decision, in effect, represents an elaboration of the reasoning underlying the Board's August 27, 1974 decision.

3. The respondent objected to the inclusion of the assistant head nurses in the bargaining unit, arguing that they exercised managerial functions, and therefore they were excluded by section 1(3)(b) of The Labour Relations Act. This contention, while commonly present in relation to head nurses, has never been seriously submitted to the Board before in relation to assistant head nurses. At least, there appears to be no decision by the Board that either deals with the argument or excludes assistant head nurses. Therefore, this decision of the Board is rather important. Additionally, because of the tremendous growth in the "white collar" and semi-professional labour sector of the Canadian labour relations system, there is a need for the Board to reconsider the application of its traditional reasoning within the framework of section 1(3)(b), to the extent that reasoning is grounded in the nature of a manufacturing setting. Accordingly, the decision represents an opportunity to do just that.

4. The section 1(3)(b) exclusions represent a legislative recognition that viable collective bargaining requires that employers be able to effectively participate in that adversary process known generally as labour relations. It was felt that effective participation in the labour relations process—a process that centres on collective bargaining—requires some assurance of security in the ranks of management. Moreover, the inclusion of independent decision-makers, particularly decision-makers in the realm of labour relations, in the bargaining unit might compromise the judgment of such individuals. But the section has not been an easy provision to apply. Because of the complexities of the work environment and the need to balance the rights of employees to join and fully participate in a trade union against the employer's interest in maintaining its labour relations, the Board has had to make very difficult judgments in drawing the line that demarcates management from the bargaining unit; (See generally The Corporation of the District of Burnaby and CUPE, Local 23 [1974], Canadian CRBR 1 (B.C.); Reed, White-Collar Bargaining Units under the Ontario Labour Relations Act (1969) p. 27. For the United States approach to these exclusions see Note, Labour Law - The National Labour Relations Board Redefines and Restricts the Scope of Managerial Employee Classification (1973) 26 Vand. L. Rev. 850). But because The Labour Relations Act must be interpreted as an Act in the public interest, it is incumbent on persons who seek to exclude employees from the scheme of the Act to prove that such persons exercise managerial functions. (See Bakery & Confectionery Workers I.U.A. v. Salmi 56 D.L.R. (2d) 193).

5. Drawing the line is a particular problem where individuals are assigned more than one function, to varying degrees, or where actual

decision-makers rely very heavily on the opinion of experienced and highly trained personnel. The Board then has to be very cautious in balancing the aforementioned interests of employees against those of employers. Otherwise fragments of an enterprises managerial function could be distributed over a great number of individuals within the enterprise or decision-makers might rely on information pooled from a great swath of lower line personnel, thereby denying legislative coverage to a large sector of the work force. Hence the Board has ruled that a person must be "primarily engaged in supervision and direction of other employees ... [with]...effective control over their employment relation-ship", (see Falconbridge Nickel Mines Ltd. [1966], OLRB M.R. 379). When assessing a person's duties and responsibilities the Board does not look at any one function in isolation but views all functions in their entirety: (Falconbridge Nickel Mines Ltd., supra), moreover, titles alone are not of much assistance in determining what a person's functions really are; (see United Steelworkers, Local 2890 v. R. McDougall Co. Ltd., [1943] OWN 743). Similarly, the Board has ruled that unless a person has independent discretionary powers rather than merely incidental reporting functions which are subject to the discretion and authority of higher persons in management, there is no reason to exclude such a person from collective bargaining; (Falconbridge Nickel Mines Ltd., supra) and an incidental or isolated involvement in some aspect of labour relations is not sufficient to exclude a person from collective bargaining; (Falconbridge Nickel Mines Ltd., supra). With regard to management's reliance upon the advice of employees who possess highly technical skills and knowledge, the Board has said the following: (CUPE, Local 1000 and The Hydro-Electric Power Commission of Ontario [1969] OLRB M.R. 669):

"In addition, the fact that managerial persons rely on the expertise of senior employees or employees who possess highly technical knowledge and skills, and act upon the advice of such persons, does not change the nature of the functions exercised by the employees. The fact that an expert employee may recommend a course of action which a member of management may decide to follow does not of itself make the employee's recommendation a managerial function. Although a recommendation may be the basis of the decision taken, however, it is the decision to implement the recommendation which can correctly be described as the managerial function."

Of course an individual's participation in decision-making processes, by way of recommendation or otherwise, may be so substantial that he or she will be characterized as employed in a confidential capacity in

matters relating to labour relations, if not in a managerial capacity; (see the full discussion in Canadian Acme Screw and Gear Ltd. [1967], OLRB M.R. 872).

6. But because of the dynamic contexts in which the Canadian labour relations system resides, (see John T. Dunlop, Industrial Relations Systems (1958) p. 7) the Board must constantly reappraise old standards and definitions as a result of its unique role in provincial labour policy formulation; (see Note, Labour Law - The National Labour Relations Board Redefines and Restricts the Scope of Managerial Employee Classification, supra, p. 862). For example, accelerated corporate growth and a rapid advance in technology have given rise to a greater concentration of economic power on the side of management and a concomitant bureaucratization of jobs that involve less supervisory duties, public contact and upward mobility. No where do we see this trend more prevalent than in the white collar sector of the Canadian labour market; (see generally S. Goldenberg, Professional Workers and Collective Bargaining, Task Force on Labour Relations (1968); F. Bairstow, White Collar Workers and Collective Bargaining, Task Force on Labour Relations (1968); J. Crispo ed., Collective Bargaining and the Professional Employee (1966); The Current Industrial Relations Scene in Canada, Industrial Relations Centre, Queen's University (1974) p. S-MP-9); and many legislatures in jurisdictions where labour boards may have failed to be sufficiently appreciative of such contextual changes have now specifically provided for the extension of collective bargaining to these people; (see Canada Labour Code, R.S.C. 1970, c. L-1, s. 125(4), s. 107; Labour Code of British Columbia, S.B.C. 1973, c. 122, s. 1, s. 47; Manitoba Labour Relations Act, C.C.S.M., c. L-10, enacted by S.M. 1972, c. 75, s. 1(k)(i), s. 2(2)). The Ontario Board must be very conscious of the rapid growth in white collar employment and consider the implications it has to their decision-making function. The scale of this growth is reflected in the following paragraph taken from an authoritative annual monograph depicting such trends; (see The Current Industrial Relations Scene in Canada, Industrial Relations Centre, Queen's University (1974) p. S-MP-9):

Rapid growth of white-collar employment--
A reflection of the above occupational revolution has been the rapid growth of white-collar employment. For example, white-collar occupations, which had accounted for around 25 per cent of the labour force between 1921 and 1941, had risen to 32 per cent in 1951, 40 per cent in 1961, and 46.4 per cent in 1972. The average annual growth rate for white-collar occupations between 1961 and 1972 was 4.4 per cent (professional and technical occupations - 6.4 per cent)., compared

with an annual growth rate of 1.9 per cent for all other occupations. These trends have also been strong in the manufacturing industries where white-collar occupations have increased from 20 per cent of the manufacturing labour force in 1951 to 28 per cent in 1971. In those manufacturing industries where technology and innovation is well-advanced, the white-collar proportion runs as high as 57 per cent with some individual companies in the 60-70 per cent range. The influence of technology in manufacturing is also reflected in the changing composition of white-collar employment, with professional, technical, and administrative occupations increasing much more rapidly than clerical positions. For example, the professional and related groups in manufacturing accounted for 53 per cent of white-collar employment in 1969, compared with 31 per cent in 1951. Employment will continue to shift toward white-collar occupations in the '70's. As in the past decade, the fastest growing occupations will be in the professional and technician categories, the ones requiring the most educational preparation.

7. Not only does this growth in the white collar labour sector represent a bureaucratization of jobs involving more reporting or conduit functions than managerial functions, but it also embodies in some industries, like in the one before us, an increase in the technical and professional competence of individual employees. Many people in the health industry—for example nurses and technicians—are highly trained individuals capable of exercising professional judgment with very little need for supervision. In fact, training builds supervision into the individual employee and may circumvent the need to have anyone of the equivalent status of the foreman in the industrial or manufacturing labour context; (see Simon, Administrative Behaviour (MacMillan Company - New York) (1961) p. 15; The Current Industrial Relations Scene in Canada, supra, p. S-MP-18). In fact such skilled people are apt to have relatively narrow zones of acceptance of authority, particularly in the areas of their own professional competence, skill and judgment; (Simon, Administrative Behaviour, supra, p. 131). The following passage which captures these organizational developments is usefully reproduced in this regard, (The Current Industrial Relations Scene in Canada, supra, p. S-MP-18):

Supervision and Decision-Making Processes--
 The changing structure and attitudes of the new labour force will also require changes in the structure and nature of supervision. Emerging supervisory trends are: fewer levels and less supervision as increasingly workers have more built-in supervision through higher levels of education and training; broader spans of supervision; more emphasis on "colleague" rather than "executive" supervision; more rational and well-reasoned bases for supervisory actions. Supervision will also have to place more emphasis on people and a recognition that people are different. Supervisory approaches must move away from the past heavy emphasis on undifferentiated treatment; ways must be found to administer differential treatment on an objective basis. As noted, too, supervisory and managerial officials will be required to develop mechanisms and an appropriate atmosphere for greater worker participation and involvement in decision-making processes. Non-negotiation in this area will be disastrous. We must engage youth more in the realities of the process, not to blunt their ideals, but to capture what is good and constructive in them and to harness their energies. No doubt some sparks will fly between the generations in the process. However, we should use these to fire the engine of progress rather than to ignite confrontations.

8. But this is not to say that every employee goes his or her own way without regard to the necessary co-ordination needed within large institutions such as hospitals. Each employee's activities, while quite independently administered to the patient, must be co-ordinated throughout the hospital with the related activities of others. For instances, nurses must have regard to the duties of other nurses, to the duties of other nursing assistants, to the duties of ward aides and they must have regard to the directions of doctors caring for the various patients. Hence there is a tremendous need to co-ordinate the professional and technical activities of nurses and to this end elaborate policy formulations are communicated to them, and a specialized group of co-ordinators has been created. This group of co-ordinators includes supervisors, head nurses, assistant head nurses, charge nurses and graduate nurses on occasion. Whether any in this group of co-ordinators exercises managerial functions,

as well as performing a co-ordinating function, is a question that must be decided on a case by case basis, and any inquiry must consider whether the inclusion of such people would have a serious effect on the labour relations of the particular institution before the Board. This Board is dealing with assistant head nurses employed by Toronto East General and Orthopaedic Hospital Inc. But it must be emphasized that mere co-ordination is an insufficient function to activate the exclusionary wording of section 1(3)(b); see The Faculty Association of Vancouver City College (Langara) and Vancouver City College, May 22, 1974, B.C. Labour Relations Board where Division Chairmen were included in the bargaining unit).

9. Of course these are not really new principles for the nursing context. A series of Board decisions have evidenced concern for the aforementioned considerations even if they did not always arrive at a result that some other panel of the Board would have accepted. And to a certain extent, because of the uniqueness of the various working settings considered, different conclusions have not always meant the application of different principles. But because of the difficulties raised by section 12 of the Act the Board should try to make the relevant principles as clear as possible. (For the application of this section in a situation that strikes very close to home see Leamington District Memorial Hospital, Board File No. 2774-72-R).

10. This concern is evidenced in Nurses' Association Ajax & Pickering General Hospital v. Ajax and Pickering General Hospital [1970] OLRB M.R. 1283, where the majority wrote:

The position of the head nurses raises complex issues. The increasing expansion of collective bargaining from industrial areas into new areas such as the public service and the development of modern organizational schemes and decision-making processes has made functions more difficult. For example, persons carrying certain titles in an industrial setting who could be taken axiomatically to exercise managerial functions have now had their duties and responsibilities dispersed, so that the indicia of management which formerly attached to them no longer remains. Indicia such as hiring the firing have been assigned to personnel departments, determining quantity and speed of work has been assigned to time study personnel and computers, and evaluating quality of work has become the responsibility of quality control personnel. The decision-making process may be individual

on-the-job decision-making, or it may have developed into group decision-making by a variety of persons. In addition, decision-making may occur outside the immediate plant, such as decisions made by independent advisors, and consultants or decisions made at a head office. Accordingly, those persons whose title almost automatically qualified them as being managerial, must be evaluated in the light of contemporary realities.

The instant case raises the further problem of the exercise of managerial authority in professional or semi-professional situations. It is patent that if this head nurse exercises managerial authority over the other nurses that she would not exercise that authority in a manner similar to the traditional foreman. The manner of authority in this kind of situation is more subtle, if at all. It must be remembered that the employees in the bargaining unit are responsible and highly trained personnel; they may on the one hand require very little direction or authority in performing their tasks while on the other hand, direction and authority may arise from such subtle mannerisms as voice inflections; yet again direction may arise out of group discussion or participation. The task confronting the Board is to evaluate the evidence in a manner that captures authority and it is a most difficult task indeed.

Also in Nurses' Association Peterborough Civic Hospital v. Peterborough Civic Hospital, Board File No. 1970-72-R, the majority had the following to say:

In earlier days when this Board was formulating criteria for determining managerial functions it was confronted in the majority of cases with industrial situations. Labour relations has now evolved to the point where we are presently being confronted with increasing application for white collar bargaining units, particularly in municipalities and other government bodies and also at Universities.

The organization of industry in many instances has evolved to the point where it differs from the period when the Board was first formulating its views about managerial functions. Some account must be taken of the changing situation. Further, while many white collar bargaining units are similar to bargaining units in the industrial sector, there are many instances where the industrial model, which we have developed at this Board, is not applicable to the white collar model. It is therefore necessary that our decisions with respect to bargaining units and managerial personnel reflect the new and evolving situations rather than reflect an oversimplified application of the former industrial criteria to the white collar area. ...

Determinations in the white collar area have also become more difficult. We have indicated we must be cautious in using the industrial model to make assessments about non-industrial or white collar situations. However, we now have greater experience with the white collar sector and we are able to draw on our specific experience in that area. In the non-industrial area we are now finding that the decision-making process and control of employees varies considerably. Like the industrial situation, personnel policies are usually developed by a personnel department, but the elements of management are usually dispersed throughout the organization. Real control and managerial functions are easily ascertained at the top of the management pyramid, but at the lower levels managerial functions are filtered through the organization in such a way that they are not easily ascertainable. Many non-industrial situations have developed a collegial decision-making process which reflect that type of organization. For example, technicians or draftsmen may work with an engineer in a white collar situation in such a manner that they participate in the decision-making process. Again, the nature of their work is such

that they move from project to project so that it is difficult to ascertain who controls the employees, see e.g. The Hydro-Electric Power Commission of Ontario (1969) August OLRB Mthly. Rep. 669.

This type of situation also occurs in hospitals. As indicated in this case there may be a team approach to patient care. Nurses will participate in the decision-making processes which are relevant in the hospital's operations. Nurses are highly trained, and the combination of their training and experience permits them a consultative role which differs from employees in the industrial context; see Ajax and Pickering General Hospital (1970) February OLRB Mthly. Rep. 1283. It would be incorrect to view such a role as managerial and thereby render nurses managerial within the meaning of The Labour Relations Act.

Head nurses stand at the very boundary between the employee group and management. The head nurse in this particular case is indicative of the role usually played by head nurses. Head nurses form a link or a liaison between management and other employees; they are in charge of a hospital floor and therefore assume many different functions. For example, a head nurse is still involved in patient care. Because of her experience she may be called upon by other nurses prior to consulting the doctor. She may also be required to assist in the orientation of nurses who are new to that particular floor. Neither of these roles is a management function, but is merely the function of the training and experience of head nurses. In addition, the head nurse carries out limited administrative duties. For example, she co-ordinates the policies of the hospital on her floor with respect to staffing. She sees that the scheduling and arranging of personnel is such that there is adequate coverage for patients. This scheduling is carried

out in correspondence with a predetermined policy and the head nurse is merely implementing policies decided at a higher level. This implementation should not be confused with the decision-making or control function that goes hand in hand with management.

Also, the head nurse forms a conduit between the general staff on her floor and management, or to put it another way she has a reporting function. In this function she is a liaison between management and other employees; she enables management to "keep its ear to the ground" and in touch with the daily operations and functions of the hospital, and at the same time she is a part of the vehicle for management to convey policies and decisions to other employees. Again, this reporting function should not be confused with the exercise of managerial duties. The duty to manage and the concept of a managerial function requires a corresponding and correlative responsibility. The head nurse in this case does not have that type of responsibility that one envisions as being managerial. She is not akin to the early foreman that we have spoken about, nor does she have duties that are incompatible with placing her in the bargaining unit. There is no conflict between the duty that she owes to management and her being a member of the bargaining unit. Again in this case, as in the Ajax and Pickering General Hospital case, supra, her very limited role indicates that she is not a member of management. For example, if an employee wants time off in excess of one hour the head nurse must consult her supervisor. Surely, if she were management she would have a greater hand in awarding time off. The type of limited responsibility permeates other areas as well and in our view her lack of responsibility indicates that she is not part of the management team.

Finally, in Nurses' Association I.O.D.E. Hospitals v. Essex Health Association, Board File No. 18260-70-R, the Board noted the differences between the functions of professional or semi-professional employees and the functions of management, in writing:

Professional or semi-professional employees such as head nurses and nurses have a different relationship with management in matters falling within their professional competence and the performance of their professional duties than employees engaged in production in other industries. While the criteria applied to determine whether professional or semi-professional persons exercise managerial functions are basically the same as with persons concerned with production, in applying such criteria a distinction must be made between functions which are of a managerial nature and functions which are inherent in the exercise of such persons' professional or technical skills. While nurses may give certain directions to others, e.g., orderlies, in the exercise of their professional skills, these directions are not dissimilar to the directions given by a journeyman to an apprentice in other crafts. Again, the reporting functions exercised by head nurses in this case may be likened to the reports one may expect from a journeyman concerning the progress of the apprentice. The head nurses report but they do not initiate independent action with respect to the employment status of others who must follow the assignments given by the head nurse. It is also interesting to note that the assistant head nurses, whom the parties have agreed are included in the bargaining unit, perform substantially the same functions as the head nurse on the shifts not worked by the head nurse.

11. Now to a consideration of the facts before the Board in light of these foregoing principles and policy considerations. The parties agreed that Janet Irwin, an assistant head nurse for the last six years, would stand for the class of assistant head nurses affected by the Board's decision. It is noted that the position descriptions for the jobs of head nurse, assistant head nurse, and senior team leader, were of little assistance to the Board in the abstract. While the parties have agreed that the head nurses are excluded from the bargaining unit and the job description for head nurse is identical to that of the assistant head nurse, the parties have also agreed that the senior team leader should be included in the bargaining unit and the job description of the senior team leader substantially overlaps with that of the head nurse and assistant head nurse. In other words, the descriptions, as well as

being in the abstract, mutually counteract each other, leaving the Board with no guidance in any direction.

12. Therefore we must rely on the evidence of Ms. Irwin and a reading of the Examiner's Report in this regard clearly establishes that she is a co-ordinator only. She does not perform a managerial function in the sense of executing independent decisions in regard to significant enterprise activity. Moreover this case clearly highlights the little need for a front-line management function in professional or semi-professional employment relationship. The workforce is large, therefore requiring co-ordination. But the employees are so highly trained and work so closely together that little, if any, labour relations supervision is required. In other words, as mentioned earlier, the role performed by the foreman in the industrial setting, has been internalized in every employee through extensive technical and professional training.

13. Ms. Irwin's evidence clearly establishes the minor, if not insignificant, requirement for authoritative supervision in the sense that someone must submit to the authority and decision of another. When asked how she supervises other employees she said (at page 2): "Well, if there was anything, for instance if it was for charting, if they hadn't charted anything I'd go to them and point out that they had forgotten to chart." This is clearly an informational role or advisory role. There was no implication of any discipline attaching to such an observation. In fact at page 8 of the Examiner's Report she explicitly stated that her function in this area was to "point certain things out". Ms. Irwin therefore had never disciplined any other employee (page 9) and admitted that her role was one of rendering advice (page 27), and this is clearly what one would expect in regard to other employees who are so highly trained.

14. The key distinguishing factor between graduate nurses and assistant head nurses was the little involvement of assistant head nurses in direct patient care. Only ten per cent of their time was spent in such activity. But this fraction only highlights their co-ordinating function. Much time, probably a majority of their time, was spent in finding out what were the doctors' directions and then communicating these directions to the graduate nurses (page 8). Naturally there is a lot of paperwork in this activity.

15. Ms. Irwin told the Examiner that she also spent time assigning nurses to various schedules and in evaluating these nurses; but when this activity is closely examined it appears: 1) to take very little time; 2) in the case of evaluation, is either uninformed or involves the mere communication of complaints; and 3) in the case of scheduling, is so tightly structured within pre-established policy that little, if any, significant discretion is exercised. For example, the assignment of shifts was done with the head nurse and it took five minutes (page 5). Furthermore, everyone was on rotation therefore it is merely a matter of determining who starts where. As for the assignment of rooms to the various teams, Ms. Irwin did not know who had done this (page 7).

16. Similarly the evaluation of other employees took five minutes (page 5) and was little more than filling out a form. More importantly if the assistant head nurse spends as much as she does on paperwork, how is she in a position to meaningfully assess the performance of the graduate nurses? This appears to be the reason why the significance of these evaluations is very vague (page 37). Finally, in this regard, Ms. Irwin admitted (page 10) that she didn't really give the evaluation—she "helped the head nurse" do this and she signed the form. In fact, after these evaluations are prepared, if they are adverse in relation to a particular employee, they are not immediately and unreservedly acted upon. Rather according to the Director of Nursing, decisions to discipline are based on several people's opinion (page 30) and the decision is made by the Nursing Office. In other words, the Director of Nursing, because of the complex technical issues surrounding patient care and the near professional standing of the employees, requires a number of opinions from employees before she makes the decision. Moreover the availability of a number of opinions counteracts any possibility of bias. But while such an approach is admirable, it in no way justifies the exclusion of the employees whose opinions are sought. In this kind of a professional working context, it is extremely unlikely that these opinions would be in any way compromised because the assistant head nurses are in the bargaining unit. In fact in many semi-professional contexts, such as universities, this kind of opinion solicitation is commonplace. Men and women give their professional or informed opinion in regard to each other and personalities must take "a back seat".

17. As for the attendance of assistant head nurses at meetings where salary increases are announced and hospital policy discussed (such as a no smoking rule in the children's wards) the Board again concludes that these meetings are only informational. No decisions appear to be made at these meetings. Rather, the Director of Nursing and other top level officials after seeking opinion, go away and make the final determinations.

18. Similarly, the preparation of requisition forms for equipment by the head nurse with the assistance of the assistant head nurse appeared to be more the recognition of depleted items. There was no indication that even the head nurse could obligate the hospital to a significant financial investment. Furthermore, it would appear that the forms are prepared by the head nurse primarily—the assistant head nurse playing some minor advisory role (page 20).

19. The assistant head nurse, Ms. Irwin, told the Examiner she could grant upwards of one-half hour off work to another employee but if an employee wanted more, that person would have to go see the supervisor who ranks above the head nurse. This limitation on the assistant head nurse's discretion nicely captures the extremely minor regulatory role that that persons plays. In this case the granting of time off appears to be little more than an employee telling another where he or she is going (but also ensures there is no abuse over time).

20. In sum, the reliance upon the greater pay received by assistant head nurses over the graduate nurses and their substantial involvement in paperwork, were really symptoms of an underlying feeling that they should have their own bargaining unit in an already overly fragmented collective bargaining context. In fact the attendance of Ms. Rosalie Ryan at the hearing who is an assistant head nurse employed by the hospital testified to this effect. It is not surprising that many of the assistant head nurses would prefer to be outside of the bargaining unit, but this preference has nothing to do with the exclusion of employees under section 1(3)(b) of the Act. Whether an employee believes that he or she is on "the managerial team" or has a different community of interest are not factors this Board can rely upon exclusively. We must go on to consider whether, in fact, that person is a member of management or should be in a separate unit because of the functions he or she performs; (see Ajax and Pickering General Hospital, supra, para. 9). We have done this and have concluded, with no hesitation, that the assistant head nurses are to be included in the bargaining unit.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C. October 21, 1974.

1. I dissent.

2. The question to be determined by this Board in the instant case is whether or not assistant head nurses should be excluded as a result of the provisions of section 1(3)(b) of The Labour Relations Act. This question, and this question alone was argued by the respective parties.

3. On the basis of the Examiner's Report and the submissions of the parties directed to that question, I would find that the assistant head nurses should be excluded from the bargaining unit in that they exercise managerial functions within the meaning of section 1(3)(b) of the Act.

4. With respect to the balance of the decision, concerning generally the ramifications of section 1(3)(b) of the Act, I am compelled to say that this question was never directed to the parties for argument, none was made, and, in my respectful, the observations made by the learned Vice-Chairman reflect an academic approach to the question ignoring the real practicalities of the problem.

6528-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. ERIE TECHNOLOGICAL PRODUCTS OF CANADA, LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: George W. Adams, Vice-Chairman, and Board Members J.D. Bell and P.J. O'Keeffe.

APPEARANCES AT THE HEARING: R. Russell and W. Lucas for the applicant; B.W. Binning, J.L. Johnston and P. Ransom for the respondent; James F. O'Brien for the objectors.

DECISION OF THE BOARD: October 22, 1974.

1. This is an application for certification.

. . . .

5. A petition was filed with the Board bearing the name of one hundred and sixty-one employees of the respondent, but in the light of the Board's practice of only relying upon such petition evidence to order a representation vote, the said petition is not relevant in that the applicant is not in a position to obtain outright certification.

6. Thus, as intimated by the preceding paragraph, the applicant has filed membership evidence suggesting that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on October 8, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. We use the word "suggesting" and do not make a finding in this regard because the respondent has alleged that the membership documents filed by the union were obtained improperly. Having regard to this allegation and such other material as was filed with the Board, the Board will investigate this matter in the usual way.

8. Mr. Russell, for the applicant, did not object to this procedure providing a representation vote would not be delayed (although he agreed that the ballot boxes should remain sealed pending the outcome of the Board's inquiry).

9. Therefore, despite Mr. Binning's contention that the Board conduct its inquiry before any representation vote takes place, the Board rules that, as the Board is conducting its inquiry into the allegations, a representation vote will be taken of the employees of the respondent in the bargaining unit but that the ballot boxes will be sealed pending both the Board's inquiry in this matter and any subsequent hearing that is necessary. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

10. While the alleged misconduct may eliminate the applicant's right to a representation vote, it is the results of that vote that are important to all of the parties concerned. If the Board were to delay the taking of the representation vote until it completes its inquiry the applicant's

organizational campaign may suffer irreparable harm in that the inquiry may vindicate the validity of the membership evidence. Whereas, the respondent's interests, the Board's interests and the interests of the objectors, can all be protected by the sealing of the ballot boxes. Hence the balance of convenience is in favour of a representation vote taking place now, although the results must await the outcome of the Board's inquiry into the allegations.

11. Mr. Russell, by letter dated October 8, 1974, alleged that an "Anti-union Committee" at the company was consistently violating section 78 of The Labour Relations Act, and the letter goes on to request "that they be advised by the Board that they cease and desist from their illegal practice". This issue was again raised at the hearing and the Board asked Mr. Russell what relevance this matter had to the certification proceedings. The allegation may be the basis to a separate proceeding before the Board, but it is difficult to understand how it bears upon the matter now confronting the Board.

12. Therefore, in summary, the Board will conduct its usual inquiry into the allegations made by the respondent but, as well, the Board orders a representation vote in this matter on the understanding that the ballot boxes will be sealed pending both the Board's inquiry and all subsequent hearings in regard to same.

13. Counsel for the objectors requested a Board ruling on the status of the objectors in these subsequent hearings before this Board as well as requesting some definition of their roles in this regard. All the Board can say is that the objectors are parties in interest to these proceedings and therefore they have a legal right to be present and participate in the subsequent hearings arising in this matter. Similarly, their role is no different than that of any other party having such an interest.

14. The matter is referred to the Registrar.

6007-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. CEM-AL SPRAY LIMITED (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada and its Local Union No. 48 (Intervener #1) v. Sprayed Fireproofing Association (Intervener #2).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: R. Koskie and A. Cola Franceschi for the applicant; R.A. Werry and H. Lim for the respondent; Robin B. Cumine and Arthur Roberts for intervener #1; T. Neil for intervener #2.

DECISION OF THE BOARD: October 22, 1974.

1. This is an application for certification pursuant to section 108 of the Labour Relations Act. The applicant has also requested that a pre-hearing vote be taken amongst certain employees of the employer. Accordingly, on July 24th 1974, the Board ordered a pre-hearing vote to be taken amongst a described voting constituency. The vote was taken and the ballot box sealed pending the resolution of certain matters.

2. The respondent and the intervener #1 both claimed that the present application is untimely by virtue of a collective agreement between the Sprayed Fireproofing Association and Local 48 of the Operative Plasterers' and Cement Masons' International Association, dated October 26th, 1973. The applicant, on the other hand, contends that this application is timely and raised a number of grounds upon which this claim was based.

3. The applicant argues that the collective agreement alleged as a bar to this application is not a collective agreement on two grounds. First, that the Sprayed Fireproofing Association is not an employees' organization within the meaning of section 1(1)(h) of the Act. That section reads as follows:

"employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers' organization."

The evidence is clear that there is no documentary evidence relating to either the formation or the constitution of such an association. Accordingly, it would be impossible for the Sprayed Fireproofing Association to demonstrate that it is an employers' organization within the meaning of section 1(1)(h). However, the document alleged to be a bar is signed on behalf of the so-called association by each of the individual employers who claimed to be members thereof. In such circumstances, we are of the view that each individual employer who signed that collective agreement intended to be bound thereto and the document referred to this constitutes a collective agreement between each individual employer and the intervening trade union. Accordingly, we can give no weight to the applicant's first argument that the document alleged as a bar is not a collective agreement.

4. The applicant also alleged that the collective agreement did not constitute a collective agreement because it contained no recognition provision within the meaning of section 35(1) of the Act. That provision reads as follows:

"Every collective agreement shall provide that the trade union is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein."

The defect alleged is that there is no bargaining unit defined in the collective agreement. Article 1(a) of the agreement reads as follows:

"The association for its members recognizes Local 48 as a sole bargaining agent for all its members in the employ of the employer with the geographical jurisdiction as defined by Labour Relations Board Map, Area 8. The jurisdiction of Local 48, from the first date of their employment, save and except the rank of job foreman."

Article 2(a) of the agreement reads in part as follows:

"The employer shall employ only members in good standing with Local 48 during the term of this agreement. A list of proof sprayers shall be mutually prepared and agreed upon by the Sprayed Fireproofing Association and Local 48."

Although the bargaining unit is not in the form that the Board would normally determine as an appropriate bargaining unit, we are of the view that having regard to the definition of article 1(a) and article 2(a) the recognition provision refers to a defined craft unit of employees and therefore complies with the provisions of section 35(1) of the Act. Accordingly, this second alternative ground suggested by the applicant must also fail.

5. The applicant also argued that in the event that the Board finds that the collective agreement alleged as a bar was a collective agreement, then, this application was timely within the meaning of section 5. The collective agreement reads in part as follows:

"(a) This Agreement shall remain in effect from May 1st, 1973 to and included April 30th, 1974.

(d) This Agreement shall remain in effect thereafter from year to year, unless one of the parties hereto gives notice to the other party of a desire to change, add to, amend or terminate this agreement at least ninety (90) days before April 30th, 1974, and in a like period from year to year thereafter."

There was also tendered in evidence a letter dated February 27, 1974, from E. Russell, Business Manager of the Intervener to the Sprayed Fireproofing Association for the attention of Mr. H. Lim which reads as follows:

"This is to notify you that we, Operative Plasterers' & Cement Masons' International Association wish to amend the present agreement between the Sprayed Fireproofing Association and ourselves, which expires April 30, 1974."

It is alleged by the respondent and the intervener that since such notice was not given prior to 90 days before April 30th, 1974, that the provision of article 1(d) automatically renewed the collective agreement for another year so that a timely application could not be made two months prior to April 30th, 1975. The evidence however, is clear that in early June of 1974, the employers and the association met with a representative of the intervener at which time "the collective agreement was discussed."

6. Questions concerning the automatic renewal of collective agreements have often caused much difficulty in interpretation. In the present case, we are of the view that it is clear that the agreement was an agreement for one year. Accordingly, the present case is distinguishable from the Hield Bros Ltd. (Kingston) case 57 C.L.L.C. p. 1638. Indeed, we are of the view that the present collective agreement is closer to that described in the Walfoods Ltd. case 58 C.L.L.C. p. 1721 and in C.H. Heist Canada Ltd. case 1973 O.L.R.B. Reports 218 (April). The effect of finding that the agreement ceased to operate on April 30th, 1974, has an effect of making the latter of February 27th, 1974, valid notice within the meaning of section 45(1) of the Act, so that the respondent or the intervener would be entitled to conciliation services with respect to the negotiations of a new agreement. Further it is clear from the conduct of the parties that they have bargained with respect to a new agreement after April 30th, 1974, thus for instance, as a result of the meeting of early June 1974, the provisions of section 15(2) would come into operation. Section 15(2) reads as follows:

"Notwithstanding the failure of a trade union to give written notice under section 13 or the failure of either part to give written notice under section 45 and 111, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement."

In these circumstances, it does not now lie in the mouth of either the respondent or the intervener to say that there is a collective agreement in force which bars the employees from expressing their views as to which trade union they want to be their bargaining agent. Accordingly, we are of the view that this application is timely within the meaning of sub-section 5 of section 5.

7. In view of the findings in the above paragraph, that the application is timely, it will not be necessary for us to deal with the argument

of the applicant that the application is also timely under subsection 1 of section 5.

8. The voting constituency for the purposes of the pre-hearing vote was as follows:

"All employees of the respondent in Metropolitan Toronto, the Regional Municipality of York, and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in all sprayed or trowelled cementitious, fibre, urethane, cellulose materials for the purpose of fireproofing, acoustical, insulation and related work, save and except job foremen and persons above the rank of job foreman."

That was agreed upon by all the parties to the application and stems article 1(a), see above, and article 1(f) of the collective agreement between the respondent and the intervener. Article 1(f) reads as follows:

"For the purpose of this Agreement, the extent of work, shall be as follows: all sprayed or trowelled cementitious, fibre, urethane, cellulose materials for the purpose of fireproofing, acoustical, insulation and related work shall be the jurisdiction of members of Local 48 of the Operative Plasterers' and Cement Masons' International Association."

9. In the construction industry the Board has a practice of describing bargaining units in terms of trades, rather than either "all employees" or employees doing certain types of work. One of the reasons for such a practice is that to refer to anything other than trades would make certification cases a possible forum for work assignment disputes and the Board is of the view that such disputes are more properly dealt with under complaints made under section 81 of the Labour Relations Act.

10. Accordingly, in the present case we propose to define bargaining unit in terms of 'painters' and 'painters apprentices.' However, the parties have requested and agreed to a clarity note indicating the type of work included within the meaning of the term 'painter.' We have accepted the agreement with the parties in this regard. Accordingly, the Board further finds that all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York, and the County of Peel, the Township of Esquesing and the Townships of Oakville and Milton in the County of Halton and the

Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman constitute a unit of employees appropriate for collective bargaining.

11. For the purposes of clarity, the Board further notes the agreement of the parties, that painters include employees engaged in spray or trowelling or cementitious, fibre, urethane, cellulose materials for the purpose of fireproofing, acoustical insulation or related work.

12. In view of the foregoing reasons, the Registrar is directed to count the ballots cast in the representation vote taken on August 8th, 1974, in this matter.

6417-74-R: Northern Electric London Professional Association (Applicant) v. NORTHERN ELECTRIC COMPANY LIMITED (Respondent) v. U.A.W. Local 1525 (Intervener).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and H. Simon.

APPEARANCES AT THE HEARING: Maurice A. Green and William Heaven for the applicant; M. Pogson for the respondent; Webster Cornwall and Russell Barber for the intervener.

DECISION OF THE BOARD: October 23, 1974.

1. This is an application for certification in which the applicant was required to satisfy the Board that it is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. In support of its position, the applicant produced Minutes of a meeting which bear the heading "Minutes of Engineering Council Meeting of February 18, 1974".

3. The first three items in the Minutes have to do with salaries, publication of a newsletter and the investigation of and report upon a cocktail party to be held in lieu of a banquet. On the face of it, these appear to be matters having to do with the ongoing business of the Engineering Council.

4. Following the foregoing there appears the heading "Constitution". Under this heading, the Minutes set out various motions and suggestions with respect to amendments to different sections of a constitution. The Minutes then indicate the unanimous acceptance of the constitution "as we now see it". The by-laws, as amended, were also unanimously accepted. The Minutes indicate that after voting upon a further motion which had to do with contacts of management, the meeting was adjourned.

5. The applicant filed with the Board a form of constitution which was identified as that referred to in the Minutes of the meeting.

6. It appears from the Minutes of the meeting of February 18 that the acceptance of the constitution was made by members of the Engineering Council but not by anyone purporting to be a member of the applicant.

7. There is evidence that an election of officers was held on April 4, 1974. The evidence of membership filed by the applicant, however, shows that no one became a member until September 12, 1974. The constitution, therefore, has not been ratified by any members of the applicant nor has the election of officers been confirmed by members of the applicant.

8. It was submitted by the applicant that a mail referendum of September 5, 1974, which thirty-two out of thirty-five members returned ballots, amounted to ratification or adoption of the whole of the constitution by the membership. The fact of the matter is, however, that the membership have not, either by referendum or at a meeting, voted to adopt the constitution as a whole. The mere fact that they voted on a proposed amendment is not sufficient to cure that large defect.

9. Having regard to the fact that the membership have not adopted the constitution nor ratified the election of officers held at a time when there were no members, the Board finds that the applicant has failed to establish that it is an organization within the meaning of section 1(1)(n) of the Act.

10. The application is accordingly dismissed.

6370-74-R: Health Sciences Association of the Regional Municipality of Niagara Falls (Applicant) v. NIAGARA REGIONAL HEALTH UNIT (Respondent) v. Canadian Union of Public Employees (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: M. Gordon and A. Robertson for the applicant; J. Finley and J. H. Yeo for the respondent; W. A. Acton for the intervener.

DECISION OF THE BOARD: October 23, 1974.

. . .

2. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

3. This is an application for certification for a unit of all physiotherapists and occupational therapists in the employ of the respondent's Home Care Plan in the Regional Municipality of Niagara.

4. By decision of the Board dated July 16, 1974, the intervener was certified as bargaining unit for a bargaining unit composed of "all employees of the respondent in The Regional Municipality of Niagara, save and except registered nurses, public health nurses, junior public health consultant, senior public health consultant, and Assistant Secretary-Treasurer and persons above the rank of Assistant Secretary-Treasurer, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (see; The Niagara Regional Health Unit Case, Board File No. 5436-74-R). It was indicated to the Board that the parties to that decision are presently in the process of negotiating with a view to entering into a collective agreement. For purposes of the instant application, it was argued by the respondent and the intervener, that the Board's certificate is a valid bar to the applicant's application for certification pursuant to section 5(2) of the Act.

5. The Board was then informed by the parties that the employees affected (or some of them) although listed on Schedule "A" may be employed as of the date of the instant application for not more than twenty-four hours per week. There was some discussion at the hearing therefore as to whether the employees listed by the respondent were full or part time employees within the criteria set out in the Board's past policy decisions (see; The Sydenham Hospital Case OLRB M.R. May 1967 135 at p. 136).

6. In any event, operating on the assumption that the employees affected by this application were in fact employed for not more than twenty-four hours per week as of the date of the application, it was submitted that the unit described by the applicant is not an appropriate bargaining unit based on the Board's past policy considerations. That is to say, it is argued by both the respondent and the intervener that the appropriate unit should read:

"All employees of the respondent regularly employed for not more than twenty-four hours per week and students employed during the school vacation period save and except etc. etc."

7. Counsel for the applicant took exception to these submissions and argued that the unit proposed is an appropriate unit that has in the past been recognized by the Board. Indeed, counsel quotes The Ottawa-Carleton Regional Area Health Unit Case (Board File No. 4862-73-R) in support of his submission that the unit of employees described in that case is similar to the unit proposed by the applicant herein. More

particularly, the bargaining unit appropriate for collective bargaining in that case reads as follows:

"All employees of the Ottawa-Carleton Regional Area Health Unit engaged in its Home Care Programme, save and except supervisors, persons above the rank of supervisor, registered nurses, graduate nurses and office staff."

8 The respondent indicated to the Board that there are other employees in its employ other than physiotherapists and occupational therapists that would fall into the appropriate unit proposed in paragraph 6 herein. It is therefore submitted that the applicant's proposed unit is inappropriate for two reasons; namely, that it does not encompass all employees employed in a part time capacity and that it carves out a portion of the respondent's employees who would otherwise be a part of the unit but are not employed in the respondent's Home Care Plan.

9. The Board indicated to the parties that to the extent that the employees affected by this application are regularly employed for more than twenty-four hours per week (ie full time employees) as of the date of the application, we would be bound by the unit description provided in the Board's decision set out in paragraph 4 herein. Counsel for the applicant was advised that any alleged defect or irregularity with respect to the disposition of that case would have to be taken up with the panel of the Board seized with that matter.

10. The Board's concern with respect to the disposition of this case pertains to two matters; namely, the determination of the appropriate unit and the composition of that unit once determined. The Registrar is therefore directed to post further notices to the employees in order that any interested person or persons may notify the Board of a desire to make representations with respect to the application and to list this case for continuation of hearing. At the said hearing the Board will entertain evidence and representations of the parties with respect to the list and composition of the bargaining unit and the community of interest of employees in the unit.

6291-74-R: International Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. FORMOSA SPRING BREWERY (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members P. J. O'Keefe and W. H. Wightman.

DECISION OF THE BOARD:

October 23, 1974.

1. This is an application for reconsideration filed by the respondent dated September 30, 1974, of the Board decision dated September 13, 1974 certifying the applicant trade union. It is alleged that the Board "erred in refusing to give effect to the petition filed" in opposition to the applicant's effort to secure representation rights for the respondent's employees. The respondent's representations were supported by submissions filed by representatives for the group of employees; namely, Mr. McArthur and Mr. Todd.

2. The thrust of the respondent's submission is that the representatives for the group of objectors satisfied the requirements provided for in the Board's Notice to Employees (Form 5) in that first hand evidence was adduced at the Board's hearing as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained. Or, in other words, the respondent takes issue with the Board's finding that failure by the petitioners to adduce first hand evidence of the preparation of the document and the delivery of the same to the Board was sufficient to justify setting aside the otherwise legitimate claim of employees to a representation vote. Indeed, counsel claims there are no cases in the Board's precedents to support this conclusion and submits in light thereof that in absence of any evidence on the record to support a finding of management influence the Board should reconsider and rule "that the acts of the employees in originating and circulating the petition were voluntary and free from outside influence."

3. There is no dispute on the facts with respect to the findings of the Board setting aside the petition. Indeed, if the Board were to accept the testimony of the witnesses called in support of the statement of desire the Board would be accepting "hear-say evidence" with regard to Mr. Soules participation in the preparation (and delivery) of the document. Counsel's submissions, of course, are based on the fact that in the circumstances of the present case the physical preparation and delivery of the document is superfluous to satisfaction of the Board's requirements as set out in its Rules of Procedure. The Board's requirements with respect to being satisfied of the origination, preparation and circulation of statements of desire are elaborated in The Village Contractors Case OLRB M.R. July 1966, 231 at page 234;

"The Board's provisions and rules respecting statements of desire (in this case called petitions) are to be found in Section 92(2)(j) of The Labour Relations Act, sections 11 [s48] and 74 and Forms 5 and 57 [Form 52] of The Board's Rules of Procedure. This being a construction industry case, section 74 and Form 57 [Form 52] are applicable. It is clear from both section 74 and Form 57 [52] that the Board is vitally concerned with

"the circumstances concerning the origination of the statement of desire". Indeed, every inquiry conducted by the Board respecting petitions begins with questions relating to their origin. As was said by the Board in Taplen Construction Limited, O.L.R.B. Monthly Report, November, 1965, p. 542 at pp. 544-45; "...Where objections in writing, signed by employees, are filed with the Board, first-hand evidence is required to be produced at a hearing with respect to the origination and manner in which each of the signatures was obtained. The purpose of such evidence is to ascertain whether the documentary evidence in question represents a voluntary expression of opinion, free from the influence of management, on the part of those signing the documents. The persons who testify on these matters are those who have prepared and circulated the documents in question." (emphasis added)

This concern with respect to preparation of petitions is made clear in The Merchants Paper Company (Windsor) Limited Case, O.L.R.B. Monthly Report, April, 1965, pp. 12-13, where the Board said: "However, in failing to adduce any evidence as to the circumstances surrounding the actual preparation of the document the employees who appeared in support of the petition have failed to meet the Board's evidentiary requirements concerning the origination of the petition (see; Weyerhaeuser Canada Limited case, O.L.R.B. Monthly Report, February, 1964, p. 599)". (emphasis added). See also Cherney Bros. Limited O.L.R.B. Monthly Report, January, 1965, p. 525.

These cases make it abundantly clear that the requirement of evidence of origination goes further than the origination and manner in which each of the signatures was obtained as argued by counsel for the respondent. In all the cases referred to the evidence went that far and indeed in some, even further, as for example in Cherney Bros. Limited. The problem in the other three cases was the lack of first-hand evidence respecting the actual preparation of the documents in question. The Remington Rand Case, (1956), C.C.H.

Canadian Labour Law Reporter, Transfer Binder '55-'59, ¶16,055, C.L.S. 76-530, although a case dealing with termination of bargaining rights, serves as an illustration of the necessity of hearing first-hand evidence of preparation of documents such as we are considering in this case."

4. The Board has interpreted the words origination, preparation and circulation of the petition to be encompassed by and subsumed in the word "circumstances" in terms of its requirement, for direct evidence of the subsistence of the document from the point of its inception to the point of its reception by the Board. This by definition would obviously include first-hand evidence detailing the physical preparation and the actual delivery of the document to the Board. Therefore in terms of the requirement for actual delivery of the document to the Board, the Board has stated in The Willow Press Case Ltd. OLRB M.R. February 1971 p. 59 at p. 62;

"As was indicated in The Sentry Department Stores Case OLRB M.R. November 1968, p. 849, the onus of making all witnesses available who may have information concerning the origination and circulation of the petition rests on the objecting employees. In the instant case, there is no direct evidence as to how the petition reached the Board although Lacroin did testify that he had asked John to mail it for him once the remaining three signatures were obtained..."

In that case, as in this case the Board determined that the petition had not weakened or qualified the applicant trade union's evidence of representation to justify a direction ordering a representation vote.

5. The Board requirement for personal, direct evidence of the actual preparation of petitions (as opposed to merely evidence of origination) was highlighted in The St. Andrews Hospital Case OLRB M.R. December 1965 578. In that case the witness attested to the fact that she actually prepared a handwritten preamble to a statement of desire which was hand copied from a typewritten copy made available to her. She had no knowledge as to how the typewritten copy came into existence. The Board in disposing of the document stated;

"Since it is apparent that the petition drafted by Mrs. Wilcox was spawned by the typewritten document, any defect in the evidence concerning the origination of the typewritten document must

flow to the handwritten document prepared by Mrs. A. Wilcox. Having regard to the decisions of the Board in The Stafford Foods Limited Case OLRB M.R. April 1965, 63; The Cherney Brothers Limited Case OLRB M.R. January 1965, 525 and Weyerhaeuser Canada Ltd. Case OLRB M.R. February 1964 579, we find that the objectors have not satisfied the Board concerning the origination of the documents filed in opposition to this application..."

6. Although the type of evidence adduced through Messrs. McArthur and Todd was indeed relevant to the origination and circulation of the document filed in opposition to the applicant's application for certification, nevertheless, standing in isolation, it was "insufficient to provide the Board with the kind of reasonably comprehensive exposition of the circumstances surrounding the origination of the petition upon which the validity of the document as an expression of the true desires of the employees could properly be judged. (see; Blondie Cleaners OLRB M.R. December 1965 629). Mr. Soules should have been available at the hearing to attest to his participation in the preparation and the delivery of the document to the Board. For the Board to accept the testimony of the witnesses called would require this panel of the Board to reverse a policy relating to the type of reliable credible evidence heretofore required to support the validity of the statement as being the true and voluntary expression of employees desires. (see; The Cherney Bros. Case OLRB M.R. January 1966, p. 525 with respect to its refusal to accept "hearsay evidence" with respect to the circumstances surrounding the initiation of a statement of desire).

7. In light of the foregoing the Board finds no reason to accede to the respondent's request for reconsideration and denies the application forthwith. In this regard Mr. Wightman although agreeing with the results in the instant case, wishes it to be recorded that he is unsympathetic with the heavy burden imposed by this Board in accepting evidence in satisfaction of statements of desire as the true expression of employees' desires.

5962-74-R: Toronto Photoengravers Union, Local 35P - GAIU (Applicant)
v. PEEL GRAPHICS LIMITED (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: H. F. Caley and L. Young for the applicant; J. T. Beamish for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBERS J. D. BELL:
October 23, 1974.

...

2. Having regard to the agreement of the parties, the Board further finds that all photoengravers and apprentices of the respondent at Brampton, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. Pursuant to the decision of the Board dated July 12, 1974, the Board directed that a pre-hearing representation vote be held in this matter. That vote was conducted on August 7 at which time the ballot box was sealed. In addition, an examiner was authorized at this time to conduct an inquiry into the duties and responsibilities of William Thorn classified by the respondent as "Photoengraver". That inquiry culminated in the report of the Examiner herein dated August 16, 1974.

4. The evidence establishes that Thorn was employed by the respondent for a duration of about one month commencing on June 24 until July 19, 1974 at which time and together with other members of the bargaining unit, he was laid off. At all material times, he reported directly to Thomas Kangas, the president and owner of the respondent. Thorn exercised no formal managerial authority over any of the employees in the bargaining unit nor was he employed in a confidential capacity in matters relating to labour relations. He did state however, in his testimony that he had occasion to train one employee by the name of Randy and that he (Thorn) understood that he would be required to train other employees as they were hired for work into the "front end" of the respondent's premises. Thorn described himself as a trained craftsman and that he was considered very well read in the gravure industry. He stated that he was hired by the respondent as a "roto gravure man" involving the new Intaglio system of printing. Prior to his hiring, he had been Secretary-Treasurer and General Manager of Roto Tone Gravure Service Limited, a company which was in the same photo-gravure engraving industry as the respondent.

4. Part of the arrangements entered into with Kangas with respect to Thorn's terms of employment with the respondent was that Thorn would be given certain days off during the course of the week in order to meet his outside personal commitments. In Thorn's words, "I was more or less free on the times that I could come in." Initially, he was to be paid \$100.00 per week which included remuneration for time spent travelling to and from work. However, he anticipated that this amount would increase once the respondent began to experience an increase in the work. It would appear that Thorn's work area on the respondent's premises was generally limited to the "front-end" area and when asked to explain the nature of his duties he replied that "...the duties were to try to get standardization in the front end of the plant so their work would come out the same repeatedly time after time." Although he indicated that most of his efforts during his relatively short period of employment with the respondent were directed towards

familiarization with the respondent's "front-end" operations, we are satisfied that he nevertheless did physically perform some bargaining unit or "productive" work in addition to his training and advising activities. Thorn specifically denied the suggestion put to him by counsel for the applicant that he was in effect acting in the capacity of a consultant to the respondent. Thorn's own description of the position applied for with the respondent, however, as set out in his Application for Employment (filed at the Examiner's hearing as Exhibit #1), is defined as "Stripper, Retoucher and Consultant."

5. The bargaining unit consisting of "all photoengravers and apprentices" and as agreed to by the parties, constitutes what is generally termed "a craft unit" of the kind usually dealt with under Section 6(2) of the Act, the relevant provisions of which provides as follows:

"(2) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or craft shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft, and the Board may include in such unit persons who according to established trade union practice are commonly associated in their work and bargaining with such group..."

6. Having carefully reviewed the totality of the evidence as adduced and even if we were to find in the particular circumstances of this case that Thorn's activities with the respondent in some respects may have transcended those normally associated with the photoengraving craft, we are nevertheless satisfied that Thorn continued to retain and perform the essentials of that craft. In this regard, it must be borne in mind that we are not dealing in the instant case with the mandatory provisions of Section 6(1) of the Act with respect to the appropriateness of an "all employee" or industrial bargaining unit. Rather, we are concerned here with a bargaining unit composed of employees which by its very nature assumes a high degree of technical skill and expertise in its members. Moreover, such a unit is all-embrasive and includes certain supervisory personnel commonly referred to as "working foremen". In this regard we are satisfied that Thorn occupies an analogous position to such a classification and we therefore find that he is included in the bargaining unit.

7. Accordingly, the Registrar is directed to place the segregated ballot cast by William Thorn in the ballot box together with the remaining ballots cast during the course of this pre-hearing representation vote, to unseal the ballot box and to proceed with the counting of the ballots contained therein.

DECISION OF BOARD MEMBER E. BOYER: October 23, 1974.

1. The evidence establishes that Thorn was employed by the respondent for one month commencing on June 24 until July 19, 1974. At all material times, he reported directly to Thomas Kangas, the president and owner of the respondent. Thorn exercised no formal managerial authority over any of the employees in the proposed bargaining unit although he did state in his testimony that he had occasion to train one employee by the name of Randy and that he understood that he would be required to train other employees as they were hired for work into the "front end" of the respondent's premises. Thorn described himself as a trained craftsman and that he was considered very well read in the gravure industry. He stated that he was hired by the respondent as a "roto gravure man" involving the new Intaglio system of printing. He had been Secretary-Treasurer and General Manager of Roto Tone Gravure Service Limited a company which was in the same photo-gravure engraving industry as the respondent.

2. The arrangements entered into with Kangas with respect to Thorn's terms of employment with the respondent are rather unique. Thorne would be given certain days off during the course of the week to meet his outside personal commitments which included his attendance at various lawn bowling tournaments and in Thorn's words, "I was more or less free on the times that I could come in. Initially, he was to be paid \$100.00 per week which included remuneration for time spent travelling to and from work. Thorn's work area at the respondent's premises was generally limited to the "front end" area where, except for one occasion he has spent his time in virtual isolation from the remainder of the employees in the proposed bargaining unit. When Thorn was asked to explain the nature of his duties he replied that "...the duties were to try to get standardization in the front end of the plant so their work would come out the same repeatedly time after time." Although he indicated that he did so some work as for example, in relation to the "wallpaper job", I am satisfied that the amount of bargaining unit work physically performed by Thorn was minimal. I further find that his efforts at the relevant times were generally directed towards familiarizing himself with the respondent's "front end" operations with a view to properly advising the respondent and which included the training of any of the employees to be utilized in this regard. However, Thorn denied the suggestion put to him by counsel for the applicant that he was in effect acting in the capacity of a consultant or advisor to the respondent. Nevertheless, I find it noteworthy that Thorn's own description of the position applied for with the respondent as set out in his Application for Employment (filed at the Examiner's hearing as Exhibit #1), is set out as "Stripper, Retoucher and Consultant."

3. Having therefore carefully reviewed the totality of the evidence as adduced, I find that William Thorn's activities with the respondent essentially transcended those of a photoengraver but rather were primarily those of a salaried advisor-consultant. In all of the circumstances of this case, I find that William Thorn is not appropriate for inclusion in the bargaining unit.

4. I would have accordingly directed that the Registrar disregard the segregated ballot cast by William Thorn during the course of the pre-hearing representation vote.

6464-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. NATIONAL-STANDARD COMPANY OF CANADA, LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and P. J. O'Keefe.

APPEARANCES AT THE HEARING: H. C. Anderson and A. Seymour for the applicant; A. J. Clark, Q.C., and T. Harvey for the respondent.

DECISION OF THE BOARD: October 23, 1974.

. . .

2. This is an application for certification for a group of the respondent's plant employees.

3. At the outset of the hearing counsel for the respondent raised a document which purports to be a collective agreement between the respondent and Employees' Committee representing hourly workers of the Guelph plant. It was indicated to the Board that the proper name of the committee should read "The Guelph Plant Employees' Association." If indeed the document held up as a bar to the instant application is a collective agreement within the meaning of Section 1(1)(e) of The Act, the application would be untimely pursuant to section 5 of the Act.

4. Counsel indicated to the Board that the respondent has been a party to a collective bargaining relationship with the association since 1955. During this period several agreements have been negotiated and pursuant to these agreements grievances have been filed pursuant to the grievance procedure, dues have been deducted and forwarded to the association under the relevant union security clause and generally the parties have conducted themselves in a manner consistent with the terms of the collective agreements negotiated. Indeed, Mr. Davis, the incumbent President of the association, confirmed the information submitted by counsel for the respondent in his testimony at the hearing scheduled in this matter.

5. Mr. Anderson, representative for the applicant trade union, submitted that the document raised as a bar to the application was not a collective agreement within the meaning of section 1(1)(e) in that the association party thereto was not a trade union within the meaning of section 1(1)(n) of the Act. More particularly, it was submitted to the Board that the association has no constitution and therefore cannot be treated as "an organization of employees" under the Act. Mr. Davis indicated that he had no personal knowledge of the adoption of a constitution when the organization came into being in 1955. He was quite certain, however, that the association had no constitution since his election as President and at the material time of the filing of the instant application.

6. Counsel for the respondent argues that it is an unwarranted intrusion on a viable collective bargaining relationship for the applicant to suggest that the document raised as a bar is not a collective agreement because the association is not a trade union. Throughout the years the association has acted in a manner consistent with that of an organization of employees for purposes of section 1(1)(n) of the Act. At this late date, when the occasion suits them, the members of the association should in effect be estopped from denying that the association is not a trade union. Counsel indicated that the respondent did not know one way or the other whether the association had a constitution. Nevertheless it is suggested that the Board, based on the past conduct of the association as a party to several collective agreements with the respondent, assume that the association has a constitution and therefore is a trade union. That is to say, the collective agreement between the respondent and the association is a valid bar to the instant application for certification under section 5 of the Act.

7. The Board has had occasion to deal with the issues raised herein in past cases. In The Parkdale Wines Limited Case OLRB M.R. July 1970 485 the Board consolidated all of its past decisions on this particular question and distilled the following procedure with respect to establishing the validity or otherwise of a collective agreement negotiated as a result of a bargaining relationship initially established through voluntary recognition and continued for some time thereafter with an organization heretofore not found by this Board to be a trade union under S1(1)(n) of the Act. As a result no presumption of union viability was established for purposes of S94 of the Act. In that case an agreement was raised by the respondent employer as a bar to an application for certification. The applicant challenged the status of the employees association as a proper trade union party to the agreement. The association's relationship with the respondent was a product of voluntary recognition established some eight years prior to the filing of the application for certification. The applicant argued that the onus was on the respondent to adduce evidence to establish that the association was a trade union within the meaning of section 1(1)(n) of The Labour Relations Act since

a collective agreement within the meaning of section 1(1)(e) of the Act can only be between an employer and a trade union or a council of trade unions. The respondent on the other hand, argued that since the agreement relied upon had been in effect for more than one year, the onus was on the applicant to call evidence to establish that the association was not a trade union in his case. The association did not intervene in the proceedings. The Board dealt with the representations of the parties in the following manner;

"When the Board is faced with the situation where a party upholds a document which it alleges to be a collective agreement and asserts that the collective agreement is a bar to an application for certification and if that document is challenged, the Board is faced with two issues. The Board must be satisfied that the document is a collective agreement within the meaning of section 1(1)(e) of the Act. As stated in the cases cited above, the Board must first be satisfied that the party to the collective agreement which represents the employees of the employer is a viable entity. The fact that the organization is a viable entity may be established by filing a constitution which would be documentary evidence of its existence and by identifying the officers or officials of the organization through whom the organization acts. Once it has been established that the organization is a viable entity and has been party to the agreement for more than one year, the Board assumes that the entity is a trade union within the meaning of the Act. The party upholding the agreement has the onus of establishing that the organization which represents the employees is a viable entity and the onus of calling evidence to establish this fact rests upon such party (see; The Peterborough County Board of Education Case).

Once it has been established that the organization which represents the employees under the provisions of the agreement is a viable entity and a party wishes to challenge the status of that entity, the second issue arises. Where the organization has been a party to the agreement for more than one year, the onus rests upon the party making such challenge

to call evidence that the entity is not a trade union within the meaning of section 1(1)(n) of the Act. (see; The Ottawa Citizen Case)."

8. The Board therefore found that the onus was on the respondent initially to establish the viability of the association as a trade union. And in order to satisfy this onus the Board required the respondent to file with the Board documentary evidence in the form of a constitution or by-laws establishing the existence of the association as a trade union or to request in writing that it wished to call viva voce evidence to establish the association as a viable entity.

9. In the instant application the Board indeed entertained viva voce evidence with respect to the status of the Guelph Plant Employees Association as a viable entity. The question presently before this Board is whether the respondent has satisfied the initial onus of establishing that the association is a trade union. The evidence before this Board was that the respondent did not know whether or not the association had a constitution. Its only information was that the members of the association held the association to be a trade union and throughout the years the respondent acted in accordance with that representation. The applicant through the evidence of the incumbent president indicated that it did not know whether a constitution was ever adopted when the association was created and therefore was not aware at the material time of the application of the existence of any such document.

10. In the Gilbarco Canada Limited Case OLRB M.R. March 1971, 155, the Board entertained viva voce evidence that an association party to a collective agreement was a trade union in that at a meeting of employees a constitution was adopted, officers were elected and membership conferred on employees in attendance. Although the Board determined that there were defects in the formative stages of the association, nevertheless subsequent events and acts including the participation by the employees in ratifying the negotiation of collective agreements were sufficient to cure any irregularities in the status of the association as a trade union. As a result, employees who sought to repudiate the bargaining relationship between the association and the employer by taking advantage of the irregularities and deficiencies at the association's formative stage were bound by their own conduct and hence estopped by the Board from repudiating the collective agreement.

11. The Board is very much influenced by the reasoning in The Gilbarco Case to find in favour of the respondent and determine that "The Guelph Plant Employees Association" is a trade union. Nevertheless the important distinction to be made in The Gilbarco Case from this case is that the respondent on the basis of viva voce evidence adduced satisfied the initial onus of establishing the existence of a constitution of the employees association. Thereafter, the employee members who sought to repudiate

the existence of a collective agreement were estopped from relying on irregularities at the time of the formation of the association in order to abdicate responsibilities owed to the respondent employer.

12 In this case, the respondent admitted that it was not aware of the existence or otherwise of a document evidencing the viability of the Guelph Plant Employees' Association. The Board is of the view that this standing alone simply is insufficient to satisfy the initial onus incumbent on a respondent employer as contemplated in The Parkdale Wines Limited Case (supra). We are of the opinion that an employer at the time of entering into a first agreement with an organization claiming representative rights for employees should satisfy itself that the organization is a trade union. This may be accomplished by requiring proof of past Board certificates or a copy of the organization's constitution. An employer that fails to make such inquiry does so at its own peril. Had the respondent employer been able to satisfy the Board that at the time the first collective agreement was entered into in 1955 such inquiry was made, (i.e. that there was a constitution in existence), then that would suffice to put the onus on the applicant to deny the existence of the association as an organization for purposes of section 1(1)(n). And, it would not suffice, in light of subsequent events indicative of a trade union viability, for the applicant to adduce evidence that it simply was unaware of the existence of a constitution.

13. Based on the evidence before this Board, we can only conclude that no constitution exists or ever existed evidencing the association was or is a trade union within the meaning of section 1(1)(n) of the Act. (see; The Brown Shoe Company of Canada Limited case OLRB M.R. December 1965, 584; Brockville Chemicals Ltd. Case OLRB M.R. July 1961 134; Drummond Transit Company Case OLRB M.R. February 1959 31; Airmaster of Canada Ltd. Case OLRB M.R. October 1973, 541; Dunco Ltd. Case OLRB M.R. September 1961 190; Kitchener Packers Co. Ltd. OLRB M.R. April 1963 70). The Board must therefore find that the document raised as a bar to the instant application is not a collective agreement within the meaning of section 1(1)(e) and the applicant is therefore timely.

. . .

15. The Board further finds that all employees of the respondent employed in its plant in Guelph save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

17. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER H.J.F. ADE: October 23, 1974.

I agree.

As much as I regret the turn of events in this matter, in the face of the circumstances as set out in this decision I have no alternative but to agree with my colleagues. I have no difficulty visualizing the growth of the relationship between the "Association" and the Respondent, nor in appreciating the existence of good-faith recognition manifested by the series of agreements entered into and the administration of same.

I deplore the repudiation of a written contract or agreement, however it is characterized, by one of the signatories thereto. The evidence is clear that the agreement was entered into in good faith; that the association held itself out at all material times as an organization with the capacity to enter into such agreement, and manifested full intent to honour it. It is not to the credit of those responsible but to their shame that they did not see fit to fulfill this commitment at least for the life of the agreement.

Nevertheless, I am compelled to subscribe to the reasoning set out in the decision, however distasteful the result.

5593-74-R: Local Union 800 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. YELLOW JACKET WELDING COMPANY LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members E. Boyer and J. E. C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Louis G. Lalande for the applicant; and W. J. McNaughton & L. Romanovich for the respondent.

DECISION OF THE BOARD: October 24, 1974.

. . .

2. The applicant is seeking certification for a bargaining unit of plumbers, steamfitters, gas fitters, welders and apprentices in the employ of the respondent.

3. The respondent opposes this application on the ground that the Board has no jurisdiction to entertain this application. The respondent adopts the position that this application is properly within the jurisdiction of the Canada Labour Relations Board and alleges that the project which forms the subject matter of this application is being constructed entirely on the Whitefish River Indian Reservation #4 which is a reserve

under section 1 of the Indian Act, R.S.C. 1970, c. 149. The respondent also alleges that certain of its employees to whom this application applies may be Indians within the meaning of the Indian Act working on their own reservation.

4. The evidence before the Board established that the project which forms the subject matter of this application is the construction of a storage facility for Canada Lafarge Cement Ltd. The respondent is engaged in mechanical installations at the project under a sub-contract from E.G.M. Cape Ltd. The evidence further indicates that the project is on the Whitefish River Indian Reserve #4 (hereinafter referred to as the "Reserve") which is situated on the eastern coast of Birch Island in the District of Manitoulin, and that while a majority of the employees of the respondent on the project are not Indians some of the employees are Indians and residents of the Reserve. The employees who are Indians were sent directly to the site under the authority of Chief MacGregor, chief of the Reserve's Band Council. The Federal Department of Indian Affairs and Northern Development has investigated the circumstances of the hiring of the employees who are Indians. The respondent has not made any deductions from the employees who are Indians with respect to income tax or Canada Pension Plan contributions.

5. The respondent submits that the Board has no jurisdiction to entertain this application because the project is located on the Reserve, and hence is subject to federal law only, being legislation in relation to "Indians, and lands reserved for Indians" within the meaning of section 91(24) of The British North America Act. The respondent contends that the exclusionary provisions of section 88 of the Indian Act have been met, as there is paramount federal legislation, namely, the Canada Labour Code, which renders provincial legislation inapplicable.

6. The applicant contends that the Board has jurisdiction to entertain this application. By virtue of section 92(13) of The British North America Act it may be argued that The Labour Relations Act, R.S.O. 1970 c. 232 as amended, is legislation in relation to "property and civil rights in the province" within the meaning of that sub-section. The applicant contends that the Labour Relations Act falls within the class of "laws of general application from time to time in force in any province" which are declared applicable to Indians in the province by virtue of section 88 of the Indian Act. Section 88 states:

"88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regula-

tion or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act."

Section 108 and 2(i) of The Canada Labour Code, R.S.C. 1970 c. states:

"108. This Part [Part V] applies in respect of employees who are employed upon or in connection with the operation of any federal work, undertaking or business and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employer.

2. In this Act "federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including without restricting the generality of the foregoing:

(i) a work, undertaking or business outside the exclusive legislative authority of provincial legislatures;"

7. There was no evidence before the Board on the status of the Canada Lafarge Cement Ltd. facility on the Reserve, that is to say, whether or not there had been a surrender of Indian Reserve lands. Sections 37 to 41 of the Indian Act provide for the surrender of Indian Reserve lands. In the absence of any representation on this point the Board assumes that the Canada Lafarge Cement Ltd. facility is situated on "lands reserved for Indians" within the meaning of section 91(24) of The British North America Act and that accordingly within the exclusive jurisdiction of the Parliament of Canada.

8. Section 88 of the Indian Act differentiates between the two classes of subjects found in section 92(13) of The British North America Act, "property and civil rights in the province". The wording in section 88 which states "...all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province..." implies that subject to certain limitations, those laws in respect of civil rights in the province as opposed to property in the province do apply to Indians in the province. See R. v. Johns (1962) 133 C.C.C. 43, 47 (Sask. C.A.). Similarly, several decisions across Canada have held provincial legislation of general application to

be applicable to reserve Indians. See for example, Campbell v. Sandy (1954) 4 D.L.R. (2d) 754 (Ont. Co. Ct.) (Committal order for default under Ontario Division Courts Act); Geoffries v. Williams (1959) 16 D.L.R. (2d) 157 (B.C. Co. Ct.) (Garnishment proceedings under a provincial statute); R. v. Discon and Baker (1968) 67 D.L.R. (2d) 619 (B.C. Co. Ct.) (Conviction for breach of B. C. Wildlife Act); R. v. Cardinal (1962) 22 D.L.R. (3d) 716 (Alta S.C.) (Conviction for breach of Alberta Wildlife Act) and Re Williams Estate (1960) 32 W.W.R. 686 (B.C.S.C.) (Distribution of estate of intestate under B.C. Administration Act).

9. The issues to be determined by the Board are: (1) Is the Labour Relations Act a law of general application in Ontario affecting civil rights rather than property? (2) If the answer to this issue "yes", then the second issue is whether provincial jurisdiction is nevertheless ousted by the terms of section 88 of the Indian Act due to (i) any other Act of Parliament; (ii) any order, rule, regulation or by-law made under the Indian Act or (iii) any treaty?

10. The Judicial Committee of the Privy Council decided in the Toronto Electric Commissioners v. Snider et. al. [1925] A. C. 396 that industrial relations legislation is prima facie legislation in relation to civil rights in the province within section 92(13) of The British North America Act. There were no representations before the Board that The Labour Relations Act is inconsistent with any order, regulation or by-law made under the Indian Act or that it was inconsistent with the terms of any treaty.

11. The Board now considers whether Indians are subject to the Canada Labour Code. The provisions of section 108 of the Canada Labour Code (formerly section 53 of the Industrial Relations and Disputes Investigation Act, R.S.C. 1952 c. 152) have been considered by the Supreme Court of Canada in the Reference re Validity of Industrial Relations and Disputes Investigation Act. (Can.) and Applicability in Respect of Certain Employees of Eastern Canada Stevedoring Co. Ltd. [1955] 3 D.R.L. 721. In that case the Supreme Court decided that in interpreting the relevant words of the federal legislation "upon or in connection with the operation of any [federal] work, undertaking or business", two points must be kept in mind. Firstly, the words must be narrowly construed to include only those activities that are "necessarily incidental" and "essential" to the work, undertaking or business. Secondly, the test to be applied in determining whether a particular work or undertaking which is itself provincial, is nevertheless to be considered as necessarily incidental to a federal work or undertaking is a functional one, i.e., what is its relation to the federal head of jurisdiction; and not one of extent i.e., what is its relation to a federal work or undertaking.

12. The functional test has been applied consistently by the Courts and by the Board in determining the issue of jurisdiction where it arises in relation to a provincial work or undertaking which is alleged to be necessarily incidental to a federal work or undertaking. See, for example, Underwater Gas Developers Ltd. v. OLRB et. al. (1960) 24 D.L.R. (2d) 673, 683 (Ont. C.A.); Re Tank Truck Transport Ltd. (1961) 25 D.L.R. 161, 172 (Ont. H. C.); Bachmeier Drill vs. Beaverlodge (1962) 35 D.L.R. (2d) 241 (Sask. C.A.); R. v. OLRB ex parte Dunn (1963) 39 D.L.R. (2d) 346 (Ont. H. C.); R. v. OLRB ex parte Northern Electric Co. Ltd. (1970) 11 D.L.R. (3d) 640 (Ont. H.C.); R. v. Industrial Union of Marine and Shipbuilding Workers ex parte J. P. Porter Co. 68 CLC ¶14,149 (N.S.S.C.); City of Kelowna v. CUPE Local 338 74 CLC ¶14,207 (B.C.S.C.); Centeast Auto Terminals Ltd. [1974] OLRB Rep. 67 and Canadian Dredge & Dock Limited [1971] OLRB Rep. 210.

13. The construction activity on the reserve is prima facie a provincial work or undertaking. The question is whether the employees engaged in the construction activity are by virtue of the provisions of sections 108 and 2(i) of the Canada Labour Code are to be deemed to be employees on or in connection with a federal work or undertaking and therefore subject to the code and federal jurisdiction. In our view, the test to be applied is the test of function. There is no indication before the Board that the storage facility is necessarily incidental to the operation of an Indian Reserve. The physical location of the warehouse facility on land subject to federal jurisdiction is clearly irrelevant since the test with respect to legislation affecting civil rights as opposed to property is one of function and not one of physical location. This Board and the Alberta Board of Industrial Relations have considered applications for certification in circumstances which are similar with respect to the location of job-sites to the instant application. In the Economy Construction Company Ltd. case, OLRB M.R. Oct. 1958 p. 17, this Board issued a certificate with respect to civilian employees who were constructing dwellings in a military base for the use of military personnel where it was admitted that the administration of the base and authority over personnel thereon fell within federal jurisdiction under the National Defence Act and regulations passed thereunder. In that case, as in the instant case, an outside contractor was engaged in construction upon property which is subject to federal jurisdiction. In the former case, the employees of the contractor were admitted on to the base only at the discretion of the military authorities. In the instant case, the Band Council has similar authority by virtue of sections 30 and 31 of the Indian Act.

14. Similarly, in the Ottawa Civil Service Recreational Association case [1971] OLRB Rep. 764, the Board entertained an application for certification for a bargaining unit of employees who were employed by a non-profit charitable corporation which had been chartered by the federal government. The principal challenge to the Board exercising jurisdiction

was based on the facts that the association was restricted in membership to federal public servants and members of the Canadian Armed Forces and that the building used by the association stands on lands owned by the federal government and leased from the National Capital Commissions for a term of 99 years.

15. In the case of Midvalley Construction Limited case, 74 CLLC ¶16,000, the Alberta Board rejected a challenge to its jurisdiction which was based in part on the fact that the employees affected by the application were engaged in the construction of an interprovincial highway within the boundaries of a national park. In rejecting this challenge the Alberta Board stated:

"The Board is of the opinion that by virtue of Section 91 of the B.N.A. Act that the control, operation and management of public property in the National Park falls within the jurisdiction of the Federal Government, however, the carrying out of the construction work by the respondent as it affects this application and the jurisdiction of this Board under The Alberta Labour Act is a matter which is incidental and subordinate to the jurisdiction of the Federal Government under Section 91 of the B.N.A. Act. In other words, the construction on the highway and streets in Banff National Park in the Province of Alberta is provincial in character and is distinguishable and separate from the management, control and operation of the public property which is not a concern of the respondent contractor."

16. Having regards to the foregoing, the Board finds that neither the fact that the job site is on an Indian Reservation nor the fact that Indians may be affected by this application as employees of the respondent is sufficient to deprive the Board of jurisdiction to entertain this application. Mr. J. E. Leonard, Examiner, is authorized to inquire into and report to the Board on the list and composition of the bargaining unit.

2950-72-U: CSAO National (Inc.) (Complainant) v. OTTAWA GENERAL HOSPITAL (Respondent).

BEFORE: T.E. Armstrong, Q.C., Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: S.T. Goudge and Lee Binnick for the complainant; and K. Billings for the respondent.

DECISION OF THE BOARD: October 24, 1974.

1. In this complaint under section 79 of the Labour Relations Act, the grievor alleges that he has been dealt with contrary to the provisions of sections 58 and 61 of the Act. Specifically, he claims that he has been discharged from his employment because of his membership in and support of the complainant union.

2. Following the filing of the complaint on December 4, 1972, a question arose as to the status of the grievor to claim relief under section 79. The screening panel of the Board, by interim endorsement dated February 12, 1973, ruled that if the grievor is not an employee for the purposes of the Act, then the Board is without jurisdiction to deal with the complaint under section 79. In the same endorsement the Board appointed an Examiner to inquire into the duties and responsibilities of the grievor.

3. Following a request by the complainant for reconsideration, the Board, in a further endorsement dated March 29, 1974,

(a) confirmed its decision that the grievor, if found to be a person falling under section 1(3)(b) of the Act (referred to herein as a "managerial person"), could not invoke section 79 of the Act to allege a violation of section 58, the latter section having been held by the Supreme Court of Canada in Jarvis v. Associated Medical Services Limited, [1964] S.C.R. 497, not to apply to a managerial person;

(b) concluded that section 80 of the Act operated to enable a managerial person to invoke section 79 if such person can satisfy the Board that he is covered by some provision of the Act other than section 58; and

(c) left open for argument the question whether section 61 of the Act applies to managerial persons.

4. In paragraph 15 of its decision of March 29, 1974, the Board concluded:

15. There remains for consideration the future course of these proceedings in the light of our decision herein.

It is the position of the complainant that he is not a person excluded by the provisions of section 1(3)(b) of the Labour Relations Act while the respondent takes the position that the complainant does exercise managerial functions within the meaning of the said section. As noted earlier in these reasons, the Board appointed an Examiner to inquire into the duties and responsibilities of the complainant and the Examiner's inquiry has been completed and his report has been issued. The respondent notified the Board that it wished to make representations at a hearing before the Board with respect to the conclusions that the Board should draw from the Examiner's report. Accordingly, the Registrar is directed to list this matter for hearing in order to enable the parties to make representations to the Board with respect to the report of the Examiner dated August 2, 1973. At that hearing the Board will also consider such representations as the parties may wish to make with respect to whether section 61 of the Labour Relations Act applies to persons other than employees covered by the Act.

5. The matter was subsequently relisted for hearing "for the purpose of entertaining the matters as set out in paragraph 15 of the Board's decision dated March 29, 1974". The parties agreed to the replacement of G.W. Reed, Q.C., as chairman of the panel and at the reconvened hearing no issue was raised as to the jurisdiction of the reconstituted panel to hear and determine all matters properly before the screening panel.

6. Thus far, the complaint has proceeded on the premise that the grievor exercises managerial functions. However, having carefully analyzed the evidence contained in the Examiner's report, as well as the submissions of the parties, the Board has concluded that the grievor is not a person who exercises managerial functions or who is employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Labour Relations Act.

7. The report discloses that Mr. Assing was classified as a charge technologist. While nomenclature is not decisive in status matters of this sort, it is not entirely without significance: see Federal Packaging and Partition Limited, OLRB M.R. July 1971, p. 448, and cases cited therein. Here the employer has chosen a designation which, in labour relations parlance, connotes that the incumbent is the senior responsible member of a working group or team, the equivalent to lead hand or group leader in the industrial plant context, or working foreman in the craft context—something less, in short, than a departmental head, supervisor, or non-working foreman.

8. The characterization suggested by the job title is borne out by

the evidence as to the grievor's particular duties and responsibilities. The uncontroverted testimony is that he spent 85%-90% of his time doing biochemical blood gas analysis within the respondent's pulmonary function laboratory. It is not suggested that this laboratory work disqualifies him from coverage under the Act. The issue, therefore, is whether the duties which he performs for the remaining 10%-15% of the time are such as to bring him within the purview of section 1(3)(b) of the Act.

9. Certain evidence strongly suggests that the grievor was not a member of management. For example, he played no role in the dismissal of employees. He did not attend meetings of management. He did not decide upon nor recommend promotions. However, there is other evidence which suggests that there may have been a managerial component to his job and we propose to examine relevant portions of that evidence in detail.

10. The grievor conceded that he was responsible for signing the time cards of those working in the laboratory (the two technologists permanently assigned to the laboratory as well as those working there on a part-time basis), although he stated that when he was absent the senior technologist performed this time-keeping function. The respondent argued that the grievor's signature on the time card amounted to specific authorization for payment, particularly in those cases where a variation from standard hours was shown. However, the grievor testified that he merely affirmed starting and finishing times on the basis of his personal observation. An employee's entitlement to payment for full time, when the approved time card showed less than the standard hours, was beyond the grievor's control. Where sick leave was shown on the time card, the evidence disclosed that the medical director's approval was required for payment to be obtained. Similarly, the director's approval was required for vacation leave.

Generally speaking, the fact that a person records or reports on the time worked by others has not been regarded by the Board as necessarily indicative of managerial status: see Sarnia Lumber and Builders Supply Ltd., OLRB M.R. April 1963, p. 28.

11. The grievor testified that he had no responsibility for the assignment of work, nor the scheduling or booking of particular laboratory referrals. The respondent attempted to contradict this testimony by showing that on two holiday week-ends, Good Friday and Dominion Day, 1972, the grievor had assumed some responsibility for emergency staffing. However, a close analysis of the evidence reveals that his role on both occasions was routine. On the Good Friday weekend, some confusion apparently arose concerning the scheduling of employees to provide emergency blood gas analysis. The grievor and one other employee both reported for work and, in order to get paid for this double coverage

and to attempt to avoid repetition of the personal inconvenience which it occasioned, he wrote a letter of explanation and complaint to the respondent's chief respiratory technologist. On the Dominion Day occasion, he sent a letter to the Administrator, outlining steps taken to ensure service during his absence over that weekend. However, in doing so he was acting under a previous arrangement with his superior, Dr. Henderson, and under the authority of the Section Administrator, Mr. Lacroix.

12. The grievor testified that it was not part of his function as a charge technologist to assess and evaluate the work of others. The respondent, however, relied on four instances (over a period of four and one-half years of employment) in support of its contention that the grievor had such responsibility. First, it was established that the grievor had assessed the work of one part-time employee. However, the particular employee was a student from Algonquin College and the grievor had prepared the evaluation on the request of an official of that college, not as part of his regular duties nor at the request of any of his superiors at the hospital. Moreover, the senior technologist (a person conceded by the respondent to be within any appropriate bargaining unit) prepared a similar assessment. Reference was also made to the grievor's written assessment of the senior technologist. However, the grievor testified that he was chastised for doing so by his immediate superior, Dr. Henderson, and was told specifically that he had no authority to make such evaluations. Dr. Henderson was not called as a witness and the respondent made no attempt to deny the grievor's assertion in this connection. The respondent also relied upon a written complaint by the grievor against an employee by the name of Lalonde. The respondent argued that this complaint constituted a disciplinary report by the grievor. The grievor, however, asserted that it was merely a complaint against a fellow employee, and that Lalonde's failure to perform her laboratory work had caused inconvenience and additional problems for him. Finally, the grievor registered a complaint with regard to insubordinate conduct by an employee named Legault. In that case the evidence indicates that the grievor was not supported by management, and, instead, was told that he was exaggerating the importance of the incident.

On balance, we are not persuaded that these four isolated instances, over a period of four and one-half years of employment, can be said to show that it was one of the grievor's assigned duties to assess and evaluate the work of the less senior employees.

13. On two of the documents tendered in evidence, the grievor signed as "Department Head". In the first instance the grievor had signed an evaluation form in the space marked "Department Head". However, he was told by Dr. Henderson that he had exceeded his authority in this instance. In the other case, he was requested to sign the particular form by the respondent's Personnel Department and he did so only after stating explicitly that he was without authority to do so and with the assurance

by Personnel that it was "a matter of formality". That the grievor regarded Dr. Henderson, rather than himself, as head of the laboratory is shown by Exhibit 19 (filed by the respondent), a letter from the grievor addressed to "Dr. J. Henderson, Pulmonary Function Laboratory" in which he makes reference to Henderson as "Department Head".

14. Having considered all of the evidence, it appears to us that in those instances where the grievor appeared to be performing a type of supervisory function, he was doing so either on his own initiative, without authority, or in circumstances where his authority was circumscribed and subject to the over-riding discretion of someone superior in rank. That fact, together with the uncontradicted evidence that the vast majority of his time was spent in laboratory work, leads us to the conclusion that at all material times the grievor was not a person who exercised managerial functions or who was employed in a confidential capacity in matters relating to labour relations. If we were to hold otherwise on the evidence before us, our decision would have disruptive implications in the assessment of the status of group leaders, lead hands and non-working foremen in a variety of other contexts. In this case there is the additional fact that the grievor is a highly trained skilled technician. As the Board observed in the Falconbridge Nickel Mines Limited case, OLRB M.R. September 1966, p. 379 at p. 388:

"...Senior or skilled employees often have more responsibilities than other rank-and-file employees and they exercise certain control and direction over the other employees because of their greater experience and skill."

See also Essex Health Association case, OLRB M.R. November 1970, p. 824, where, in dealing with the status of head nurses, the Board observed:

"...Their decision-making functions are related to their professional competence, technical skill and experience, rather than to matters of a managerial nature."

15. We point out that our conclusion as to the status of the grievor is consistent with the determinations made by other panels of the Board dealing with persons similarly classified: see Ottawa General Hospital case, Board file No. 20-70-R (March 1, 1973); and Mississauga Hospital case, Board file No. 18,764-70-R (January 31, 1973). In the latter case, the Board observed:

"The charge technologists both work with and direct the work of the employees in their respective departments in the respondent's laboratories. The nature of the charge

technologists' supervisory responsibilities and the control which they have over the employment status of the employees working under them, however, are circumscribed in scope and the degree of independent discretion which they exercise is limited."

The same may be said of the duties and responsibilities of the grievor in the instant case.

16. For all of the above reasons, we find that at all relevant times the grievor was not a person who, in our opinion, exercised managerial functions or who was employed in a confidential capacity in matters relating to labour relations, within the meaning of section 1(3)(b) of the Act. Therefore, it is unnecessary for us to determine the question of statutory interpretation alluded to in paragraph 15 of the Board's endorsement of March 29, namely: "whether section 61 of the Labour Relations Act applies to persons other than employees covered by the Act". However, we were urged by both counsel to deal with that issue, irrespective of our finding on the status question. In deference to the able arguments of counsel and because of the importance of the issue, we have decided to express our views on the matter, even though we have found that the grievor is not a managerial employee.

17. The following sections of the Act are relevant:

1.(1) In this Act,

(n) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union and a certified council of trade unions.

1.(3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee,

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

3. Every person is free to join a trade union of his own choice and to participate in its lawful activities.

61. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

18. Counsel for the complainant, Mr. Goudge, advanced a number of propositions in support of his contention that section 61 applied to all persons, employees and managerial persons alike. He contended that there are no words of limitation, qualification or restriction applying to the word "person" in section 61, arguing that in the absence of qualifying language the word should be given its normal and customary meaning. In this connection, he referred the Board to the dictionary definition referred to in the dissenting judgment of Spence J. in the Jarvis case.

19. He further contended that in so far as section 61 relates to membership in a trade union, there is nothing in the Act prohibiting managerial persons from becoming members of a trade union. In support of that latter proposition he referred to the dissenting judgment of Judson J. in the Jarvis case, as follows:

"... For example, s. 3 of the Act provides that every person is free to join a trade union of his own choice and to participate in its lawful activities. This right is not limited to employees as defined by the Act, that is, to the exclusion of a person exercising managerial functions. Thus, a person who is not an employee as defined by the Act because of these managerial functions is still a person and is amenable to the obligations of the Act and entitled to its protection."

20. As both counsel agreed, the threshold issue is whether the question now before us has been finally determined by the Supreme Court of Canada in Jarvis. Mr. Goudge for the complainant contended that it was apparent that in construing section 50 [now section 58] in a restrictive way, the Ontario Court of Appeal and the Supreme Court of Canada had relied upon the peculiar phraseology of that section and, in particular, the use of the words "person", "employee", "employment" and "employees" in the relevant subsections of section 58. He argued, in effect, that the use of "person" in that context connoted a legislative intention to limit the section's coverage to persons having a non-supervisory, non-confidential employment relationship—a relationship, in other words, implicitly subject to the limiting provisions of

section 1(3) of the Act. He pointed out that section 61, by contrast, contained none of the words of implicit limitation contained in section 58 and that therefore the court's restrictive interpretation of section 58 was clearly inapplicable to section 61.

21. We are inclined to the view that counsel's reading of the majority decision of the Supreme Court of Canada in Jarvis is too narrow in that it fails to give effect to the following passage in the judgment of Cartwright, J. (Taschereau C.J.C., Fauteux, Martland and Hall, J.J. concurring):

"It appears to me that the appeal can succeed only if we are able to construe the Act as giving the Board power, in appropriate circumstances, to compel the continuation of the employment not only of all persons who are 'employees' within the meaning of that term as defined in the Act but also of all persons exercising managerial functions.

"In my opinion such a construction would be at variance with the purposes which appear from reading the Act as a whole, and would involve giving a forced meaning to the words which the legislature has employed."

It is true that the court was considering the ambit of section 50 [now section 58] of the Act and not section 61. However, as appears from the passage quoted, the court was construing the Act as a whole; no exceptions or qualifications are indicated. If, in its construction of the whole Act, the court had concluded that a managerial person could, under some circumstances, compel the continuation of his employment, it surely would have said so. However, even if we are wrong in our understanding of the scope and effect of the court's decision in Jarvis, we cannot accept the interpretation of section 61 for which the complainant contends.

22. It is to be noted that section 61 prohibits compulsion by intimidation or coercion in respect of:

- (a) membership in a trade union;
- (b) membership in an employers' organization;
- (c) the exercise of other rights under the Act;
and
- (d) the performance of any obligations under the Act.

In other words, it is a composite section, referring to a variety of situations and protecting a broad range of employer and employee activities. For example, the matters referred to in (b), (c) and (d) above could cover the activities of employers or persons acting on behalf of employers. It cannot therefore be asserted, as a proposition of general application, that section 61 is not available to persons other than employees covered by the Act.

23. However, we are not called upon in the instant case to construe section 61 in the abstract. Here the grievor has asserted that he has been dealt with by the employer contrary to section 61 as a result of his membership in and activity on behalf of the complainant union. That specific and limited basis for his complaint is apparent from the text of the complaint itself. In addition, the Board put the specific question to Mr. Goudge during the course of argument and received counsel's assurance that no other ground was being asserted. It is, as we have suggested, conceivable that a management person might invoke section 61 to allege interference with some right totally unrelated to union activity. However, in view of the very explicit basis for the complaint in this case, we need not concern ourselves with such hypothetical situations. We are faced squarely with a much narrower question of interpretation: namely, can a managerial person claim, as a matter of statutory right, that he is entitled to become a member of a trade union and to participate in its lawful activities?

24. In our view, it would be repugnant to the whole scheme of the Act to conclude (as we would have to do if we were to accept the argument of counsel for the complainant) that a managerial person is given any such right by the Act. The broad language of section 3—"Every person is free to join a trade union and to participate in its lawful activities"—must be read subject to the definition of "trade union" (section 1(1)(n)) as an organization of "employees" and to section 1(3)(b) which says, in effect, that a managerial person is not an "employee" for the purposes of the Act. This is not to say that no one other than an employee, in this restricted sense, can join a trade union. One of the reasons, presumably, why "person" (rather than "employee") is used in section 3 is to enable a person not currently employed to become a member of a trade union. However, as we have said, it would be contrary to what we conceive to be the essential purpose and scheme of the Act to conclude that a managerial person has a protectable right to union membership.

25. We are fortified in this conclusion by certain other sections of the Act. Section 12 prohibits an employer from contributing financial or other support to a trade union and section 56 enjoins a person acting on behalf of an employer from contributing financial or other support to a trade union. It is, of course, arguable that the prohibitions contained in sections 12 and 56 do not apply to a junior management official whose interests in the particular circumstances are aligned with the trade

union and who is not acting on behalf of management when supporting the union: see for example the Air Liquide case, 64 3 CLC ¶16,002. However, it is one thing to conclude (as the Board did in Air Liquide) that a managerial person may participate in a union's organizing drive without necessarily destroying the union's capacity to become certified. It does not follow, as a matter of law or logic, that such a managerial person has an enforceable right under the Act to protection against coercion or intimidation in respect of such conduct.

26. Mr. Goudge relied heavily upon the passage in the judgment of Judson J. referred to in paragraph 19 supra. While this obiter comment is entitled to great weight, it is, none the less, contained in a dissenting judgment. Moreover, it makes no reference to the statutory definition of "trade union". As we have said, the use of the word "person" in section 3 may very well reflect considerations by the Legislature quite unrelated to the distinction between managerial and non-managerial employees: for example, the right of a person not already employed to join a union. However, once he becomes an employee, his rights are surely subject to and limited by all provisions of the Act, including section 1(3).

27. We wish to emphasize that our conclusion that a person performing managerial functions under section 1(3)(b) is not entitled to assert rights in relation to union membership and activity, is not to be taken to mean that a trade union is precluded, in all circumstances, from having such persons amongst its membership. As we have already said, the question as to whom the union may receive into membership in the light of sections 1(1)(n), 1(3), 3, 12 and 56 of the Act, is entirely different from the question of who may rely upon the protections afforded by section 61 and other unfair labour practice provisions of the Act relating to union membership. The former question arose in Hamilton Construction Association and Builders Exchange v. O.L.R.B., (1963) 2 O.R. 293. There the respondent employers' association resisted an application by the union for consent to institute prosecution on the ground that the union had supervisory personnel in its membership and had therefore lost its status as a "trade union" as defined in the Act; i.e., "an organization of employees...". The Board rejected that argument and, on an application by way of certiorari, was upheld by the Supreme Court of Ontario. Schatz J. summarized the argument of the employer's organization as follows:

"Mr. Laidlaw argues that the Ontario Labour Relations Act is based on the principle of dealing with two opposing groups, namely, employers, on the one hand, and employees, on the other, and that therefore when the definition of trade union says 'means an organization of employees' rather than 'includes an organization of employees', the definition is

intended to confine the membership of a trade union to employees exclusively, and further, therefore, that since the evidence clearly shows that the organization which was granted permission to prosecute by the Board had at that time within its membership those 'with managerial functions', the organization could not then be a trade union, and any finding by the Board that it was a trade union was in contravention of the Act and in violation of the true intent and meaning of the Act."

His Lordship held that the question was one entirely within the Board's jurisdiction to determine, and refused to interfere with the decision on that ground. However, he added:

"I may state further that, even if the question of the said local No. 18 being a trade union were a collateral issue and even if I could then review the evidence with a view to quashing the Board's decision, I would not disagree with the Board's finding."

28. Although it was not argued before us, we wish to refer to the report of the Honourable Mr. Justice Roach, sitting as a Royal Commissioner under The Public Inquiries Act in Re Individual Dump Truck Owners Association and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 1958 (unreported). One of the questions before the Commissioner was whether independent dump truck contractors could become members of the Teamsters Union. At p. 92 of the decision, the Commissioner states:

"Mr. Lewis sought to get some comfort out of section 3 of the Act which reads as follows:

'Every person is free to join a trade union of his own choice and to participate in its lawful activities.'

It is perfectly clear from other sections of that Act that the words 'every person' in section (3) do not include and were not intended to include an independent contractor because an independent contractor is not an employee. An independent contractor, if not presently an employer, is a potential employer. Once an employer joins an organization which includes employees in its membership, then that organization becomes not

'an organization of employees' but an organization of employees and employers, and accordingly, though it may have previously been a 'trade union' within the Act, it at once loses its character as such and thereby loses its powers and privileges under the Criminal Code to which more particular reference will be made later."

and later, at p. 93:

"Each employer truck owner who paid to the Union an initiation fee or Union dues or some amount on account of both or either, thereby contributed financial support to the Union contrary to the prohibition contained in section 45 [now section 56] and if the Board gave its consent to prosecution under section 65 [now section 90] was liable to the penalty prescribed by section 61 [now section 85]."

29. As we read the Commissioner's Report, he was dealing with the effect on the status of the trade union when an employer (i.e., an owner or entrepreneur, as opposed to a person exercising management functions on behalf of an owner) allies himself with the trade union. His conclusions do not contradict the principle enunciated by the Board in Air Liquide, and related cases (see para. 25, supra)—a principle which we believe to be valid, and one which we adopt and reiterate.

30. As counsel for the complainant suggested in argument, there may well be valid policy reasons for extending protection to certain classes of managerial employees in certain carefully defined circumstances. We appreciate that, ultimately, an employee found by the Board to be performing managerial functions may in good faith believe he is an employee entitled to be represented under the Labour Relations Act. Acting on this belief, he may, quite innocently, participate in the union's organizing campaign and may later be intimidated or coerced because of that activity. Our interpretation of section 61 of the Act as a whole is that such a person has no protection under the Act. Whether there should be such protection is a matter for the Legislature. However, the Board cannot, by a misinterpretation of the statute, legislate a right where none exists.

31. The fundamental premise of the complainant's argument is that a managerial person is free to join a trade union and to participate in its lawful activities (section 3 of the Act) and that that right is protected by section 61. Where, precisely, does that argument lead? Did the Legislature intend to confer upon a managerial person a protectable right to join an organization which has no legally enforceable right to represent him in collective bargaining? Does it follow, if the

complainant's argument is accepted, that a managerial person can hold elective office in the union, participate in bargaining on its behalf, vote in ratification and strike votes, and, where the law otherwise permits, join in strike action with other members of the union? We prefer a construction of the statute which avoids these questions.

32. Finally, there is a question of whether section 61 creates an employer offence. It is to be noted that sections 56 through 72 of the Act fall under the general title "Unfair Practices". Only three of those sections: 62, 67 and 72, are directed against "persons" alone. On the other hand, seven sections: 56, 58, 59(1), 64, 66, 70 and 71, refer specifically to "employers". Where, as in sections 62, 67 and 72, "person" is used alone, it may be argued to apply inter alia, to an employer: see the Interpretation Act, R.S.O. 1970, c. 225, s. 30 (28). However, it seems to us that wherever there is a multiple reference to several named entities (e.g., sections 56, 58, 61, etc.), the presumption is that the reference is intended to be exhaustive: expressio unius est exclusio alterius. Contrasting section 61 with sections 56, 58, 59(1), 64, 66, 70 and 71, we are inclined to the view that the Legislature's failure to include "employer" in the categories listed in section 61 was deliberate. However, the point was not argued before us and if final determination on it is necessary, it may be made by the panel assigned to hear the merits of the complaint.

33. In view of the statements obtained by the Examiner, Mr. J.A. MacDonald, in the course of his inquiry into the complaint in this matter, and in view of our finding as to the grievor's status, the Board is of the opinion that it should inquire into the complaint with respect to George Assing by means of a hearing by the Board.

34. The appropriate notices of hearing will issue.

5198-73-R: Canadian Union of Public Employees (Applicant) v. THE THUNDER BAY PUBLIC LIBRARY BOARD (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members D. B. Archer and J. D. Bell.

APPEARANCES AT THE HEARING: S. R. Hennessy and Hugh Lennon for the applicant; J. P. Sanderson and F.J.W. Bickford for the respondent.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL: October 25, 1974.

1. The applicant is seeking certification for a bargaining unit of librarians. The respondent has proposed the use of the words "professional librarians" in describing the appropriate bargaining unit.

The respondent on the date of the making of this application was a party to a collective agreement with the Canadian Union of Public Employees, Local 87. Approximately forty employees at three separate locations of the respondent are covered by this collective agreement. Among the classes of employees covered by this collective agreement are "sub-professionals - employees with a B. A. or other applicable training" and "library assistants". Among the excluded classes are "professional librarian - those employees with a BLS or equivalent". The parties have by virtue of their previous collective bargaining already substantially defined the appropriate bargaining unit in the instant application.

2. At the second hearing of this application, the applicant agreed that the appropriate bargaining unit in the instant application ought to be described in terms of "professional librarians". While the Board is by no means convinced of the value of defining bargaining units in terms of "professional librarians" as opposed to "librarians", it must have regard to the existing pattern of collective bargaining which exists between the respondent and the Canadian Union of Public Employees, Local 87. In the light of the foregoing, the Board is of the opinion that in the circumstances of this application, the appropriate bargaining unit in the instant application ought to be described in terms of "professional librarians".

3. The parties are in basic agreement on the description of the appropriate bargaining unit, they are apart on the inclusion or exclusion of the following five persons:

Brian Ingram - district librarian

Lois Rheault - district librarian

Janice Ditmars - branch librarian

Sharon Illingsworth - stock editor

and Elizabeth English - children's co-ordinator.

4. The respondent claims that these persons exercise managerial functions or are employed in a confidential capacity in matters relating to Labour relations within the meaning of section 1(3)(b) of The Labour Relations Act. The applicant argues for the inclusion of these five persons in the bargaining unit on the grounds that they neither exercise managerial functions nor are employed in a confidential capacity in matters relating to labour relations.

5. The respondent's three locations are on Brodie Street, Brock Street and Arthur Street in the City of Thunder Bay. Mr. Ingram is the district librarian at Brodie Street. Mrs. Rheault is the district

librarian at Arthur Street. Miss Ditmars is the branch librarian at the library on Brock Street which is by far the smallest of the three libraries.

6. At the second hearing counsel for the respondent conceded that there were no precise lines of demarcation of authority between the five persons referred to in paragraph three herein and the persons they supervise. We agree with this observation and note that this may be the reason why much of the evidence in the Report of the Examiner is conjectural in nature. Answers in reply to questions are subsequently modified by further probings which reveal that a specific authority has never been exercised and that the basis for its claim is uncertain. In addition, the respondent apparently did not reduce to writing the duties of the persons in dispute. Such persons orally received the delineation of their authority from the chief librarian. Against this background the Board weighs the duties and responsibilities of these five persons.

7. Mr. Ingram is directly in charge of five professional librarians, three library technicians and twelve library assistants. His basic function is to see that the library on Brodie Street is efficiently run and that the respondent's decisions and instructions are executed. In addition, he is responsible for hiring temporary staff during the summer. At the end of a probationary period he is required to submit a written report which determines whether or not a person is taken on permanent staff. Mr. Ingram is responsible for the assignment of work to professional librarians and non-professional staff. There is some doubt about the authority of Mr. Ingram to hire professional staff. After considering the evidence surrounding the hiring of Gail Thompson, we are satisfied that he has the authority to hire professional librarians and has exercised this authority. He attends monthly post-board meetings (i.e., those meetings which are held after the respondent's stewards hold their periodic meetings) with the chief librarian and the other four persons referred to in paragraph three herein where the proceedings of board meetings and matters of concern in running the libraries are discussed. In viewing the evidence as a whole with respect to Mr. Ingram, we are satisfied that he exercises a sufficient degree of supervisory power and independent discretion in decision making so as to cause us to find that he exercises managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

8. Mrs. Rheault has three professional librarians working for her. She is responsible for directing their work and for the administration of the library on Arthur Street. She has hired one temporary library assistant and one Sunday part-time staff. The temporary assistant was interviewed by Mrs. Rheault and was hired by her without consulting anyone. In addition, she had effectively recommended a promotion for a professional librarian and schedules the vacations for the three professional librarians who work for her. She also has the authority to grant time off with pay and has exercised this authority. Mrs. Rheault has the authority to reschedule work and has also exercised this authority. In

addition to the three professional librarians she has a support staff of fourteen. If a vacancy occurs in the bargaining unit covered by the collective agreement (referred to in paragraph one herein), Mrs. Rheault decides if it is to be filled and posts notice of it. While Mrs. Dutchak, a ground floor supervisor at Arthur Street, may recommend a course of action, Mrs. Rheault has the ultimate responsibility on any course of action affecting this library. We find that Mrs. Rheault exercises a substantial degree of independent discretion in decision making so as to support a finding that she exercises managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

9. Miss Ditmars is the branch librarian at Brock Street and her immediate supervisor is Mr. Ingram. She has two full-time and one part-time library assistants and about six pages who report to her. Miss Ditmars has never made a written or oral report on any of the employees and a technical or staff problem would be checked with Mr. Ingram. In contrast to the other four persons referred to in paragraph three herein she has attended only two post-board meetings. She did not select the summer student in 1973. However, Miss Ditmars is the only person at Brock Street who is responsible for ensuring that the work is done properly and she has the authority to reschedule work. While she may initiate her own programme, Miss Ditmars generally follows the programme laid down by the library at Brodie Street in the selection of new books. The chief librarian has a different perception of the duties and responsibilities of Miss Ditmars, and, according to his evidence, she has the direct responsibility for disciplining, instructing, interviewing, over-time, final decisions and hiring of the non-professionals. Moreover, he states in his evidence that she has hired pages. On the other hand, Miss Ditmars states that in her present position she "has had no occasion to hire, fire, discipline, suspend, recommend a salary increase, promote, or demote...". On this conflict in the evidence we accept the evidence of Miss Ditmars in preference to that of the chief librarian, Mr. Mutchler.

10. The evidence with respect to Miss Ditmars indicates a restricted area for the exercise of independent discretion. She has responsibility in her position but the evidence does not reveal any suggestion that her responsibility is other than in routine matters. Similarly, there is no evidence that she exercises any supervisory powers. We find that Miss Ditmars does not exercise managerial function within the meaning of section 1(3)(b) of The Labour Relations Act.

11. Mrs. Illingsworth is the stock editor. A clerk, a clerk-typist, a part-time clerk-typist and a professional librarian (cataloguer) report to her. A sub-professional, a clerk-typist and a part-time processor report to the cataloguer. Indirectly the cataloguing staff report to Mrs. Illingsworth. The positions of clerk and clerk-typist were filled through her actions. She contacted Canada Manpower and was supplied with three clerks and five or six typists. She interviewed the prospects and

hired after a brief discussions with the chief librarian. She made the decision to hire and the chief librarian upheld her recommendation. It is her responsibility to reprimand or discipline her staff and she keeps a record of all sicknesses. Mrs. Illingsworth has attended post-board meetings and prepared a probationary report on the cataloguer. She does not have the power to suspend an employee but could recommend suspension of an employee.

12. Mrs. Illingsworth's duties consist chiefly of book selection, stock records and co-ordination. She is able to authorize overtime and, in addition, she oversees the spending of the budget. She receives the orders from the three librarians and in the event of a difference of opinion she has the power to overrule the order in question. There is scant evidence that Mrs. Illingsworth actually exercises any appreciable amount of supervisory powers. However, it is apparent that she is able to exercise considerable discretion and independent judgment in her responsibility for the implementation of the respondent's book buying policies. The sum of money involved for the purchase of adult books alone is \$97,000.00 for 1974.

13. We find that Mrs. Illingsworth exercises a substantial degree of independent judgment and discretion and we find that she exercises managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

14. Miss English is the children's co-ordinator. Mr. Mutchler is her immediate supervisor. No staff report to her. She gives neither instructions nor directions to the three children's librarians but makes suggestions that they do not have to follow. She has done a six month's probation report on Miss Ditmars and on one of the children's librarians and she hired two of the children's librarians after consulting the chief librarian. She spends only a small percentage of her time on supervision and although her acts of hiring personnel are subject to consultation with the chief librarian, Miss English makes the final judgment in hiring professional and non-professional staff.

15. Miss English is ultimately responsible for book purchases in the children's department, for interpreting the respondent's policy for the children's department and for the overall budget requirements for the children's department. While her supervisory role is limited, we are of the opinion that Miss English exercises a substantial amount of independent discretion and personal judgment in the exercise of her duties for the respondent and we find that she exercises managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

16. The five persons referred to in paragraph three herein have only an incidental and minor contact with the labour relations and we

find that none of them are employed in a confidential capacity in matters relating to labour relations.

17. We further find that all professional librarians employed by the respondent in the City of Thunder Bay, save and except chief librarian, secretary to the chief librarian, district librarians, stock editor, children's coordinator, and persons regularly employed for not more than twenty-four hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.

18. We note the agreement of the parties that persons engaged principally in clerical duties or as pages are excluded from the bargaining unit either on the basis that they do not have a community of interest with librarians or that they are covered by the subsisting collective agreement between the respondent and the Canadian Union of Public Employees, Local 87.

. . .

20. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER D. B. ARCHER: October 25, 1974.

I dissent. I do not believe that any of the persons in dispute are employed in a confidential capacity in matters relating to labour relations or exercise such managerial authority that would make them ineligible for union membership. I feel this is particularly true of Miss English and to a lesser extent of Mrs. Illingsworth. Therefore, I would have included these two persons in the bargaining unit.

6105-74-U: Nikos Kotinopoulos (Complainant) v. THE BECKER MILK COMPANY LIMITED (Respondent).

-and-

6106-74-U: Abe Hajjar (Complainant) v. THE BECKER MILK COMPANY LIMITED (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members J.D. Bell and O. Hodges.

DECISION OF THE BOARD: October 25, 1974.

1. On behalf of the complainants, this Board issued the following summonses and the breadth of both these summonses is now challenged by the respondent. The summonses read:

"You are hereby summoned and required to attend before the Ontario Labour Relations Board at a hearing to be held at the Board

Room, #400 University Avenue, in the City of Toronto, on Tuesday, the 27th day of August 1974, at the hour of 9:30 o'clock in the forenoon, (local time) and so from day to day until the hearing is concluded or the tribunal otherwise orders, to give evidence on oath touching the matters in question in the proceedings and to bring with you and produce at such time and place (1) employee records from January 1, 1971 to the present including the records of all employees dismissed during that period; (2) records of bank deposits made by all Becker Stores in Metropolitan Toronto, between March 30, 1972 and January 3, 1974; (3) copies of standard form Becker Store Manager Contracts used between January 1, 1970 and the present; (4) all correspondence sent or received by Becker Milk Company to or from its employees concerning the formation of an employees' association and all internal memoranda, notes, documents and minutes of meetings related to the formation or existence of an employees' association."

2. The respondent asserts the volume of documents involved in items (1) and (2) is oppressive and appears to be more in the form of a fishing expedition, and while the respondent is agreeable to item (3) it requests greater particularly in regard to item (4).

3. Counsel for the complainants argues that all of the documents requested are essential to his theory of the case. More specifically, the documents in items (1) and (2) of the subpoena will, it is hoped, establish that other employees have not been dealt with in a similar fashion in similar circumstances - a fact which, if established, the complainants will argue goes to the issue of the employer's anti-union animus. Item (3) was uncontested and the complainants argued that item (4) could be particularized in no greater detail.

4. Section 92(2)(a) of The Labour Relations Act reads:

92.-(2) Without limiting the generality of subsection 1, the Board has power,

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and

things as the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;

Thus, the Board derives its powers to summon witnesses and documents from this section, but the wording gives little hint to the parameters of these most important powers. However, it is necessary to note that while the section refers to what "the Board considers requisite to the full investigation and consideration of the matters within its jurisdiction" - a standard that looks very discretionary - it also stipulates that such discretion should be exercised in accord with the practice of "a court of record in civil cases". Thus we should examine what these courts do in similar circumstances.

5. However it is equally as important to note the big differences between the Ontario Labour Relations Board's procedures and a civil court's in order to assess just how closely the "civil approach" should be followed. In this regard, no discovery accompanies the Board's procedures hence hearings before the Board cannot be completely analogized to hearings in civil matters, and a fortiori, the subpoena duces tecum (used by both the Board and the courts) may not have an identical nature in both proceedings. In other words, not only should this Board examine the judicial pronouncements depicting the nature of the subpoena duces tecum but it should go on to consider some of the principles that circumscribe the discovery procedures of a civil court. After having done this, it may become apparent that the Board's process should fall somewhere in between these two procedures.

6. The Board's "Summons to Witness" form is in the nature of a subpoena duces tecum which was defined in The Commissioner for Railways v. Small (1938), 38 N. So. Wales 564 at p. 573, in the following way:

"A subpoena duces tecum is a writ which is issued by the Court as of course upon application by praecipe by or on behalf of a party to a cause or matter commanding some person or persons to attend before the Court to give evidence, and also to search for, bring and produce to the Court some document or documents relating to the cause or matter. In form, it is a writ of subpoena ad test., with an addendum directing the production of documents. The Court has undoubted jurisdiction to issue such a writ: Amey v. Long (1); and disobedience to the writ

is punishable by fine or attachment or both; R. v. Daye (2)"

7. Obviously this power is a substantial one and must be exercised in a very circumspect manner. A subpoena duces tecum cannot be used as an instrument to harass or to annoy unreasonably an opponent; (see René v. Carling Export Brewing Co. (1927), 61 O.L.R. 495; Clemens v. Crown Trust Co. [1953] O.R. 87 at p. 94, [1952] O.W.N. 434; and Brittain Steel Fabricators Ltd. v. Amiable (1967), 64 D.L.R. (2d) 663 (B.C.)). And a subpoena duces tecum should state with reasonable particularity the documents which are to be produced; (see A.G. v. Wilson, 9 Sim. 526 at 529; Earl of Powis v. Negus [1923] 1 Ch. 186 at 190; The Commissioner for Railways v. Small, *supra*, and Lee v. Angas (1866), L.R. 2 Eq. 59). Furthermore, although the limits of this principle are vague, a subpoena duces tecum should not be used "for the purpose of fishing, i.e., endeavouring, not to obtain evidence to support [a] case, but to discover whether [one] has a case at all"; (see The Commissioner for Railways v. Small, *supra*, at p. 575; Hennessy v. Wright 24 O.B.D. 445 at 448; Griebart v. Morris [1920] 1 K.B. 659 at 666). And finally, a subpoena to a party will be set aside as abusive if great numbers of documents are called for and it appears that they are not sufficiently relevant; (see Steele v. Savory [1891] W.N. 195).

8. Applying these principles to the present request we would rule, that at least at this point in the proceedings, item (1) (save for the records of those employees dismissed from January 1, 1971 until January 3, 1974) and item (2) are more in the nature of a fishing expedition, or at the very least, involve great numbers of documents that are not, at this time, sufficiently relevant. In regard to item (4), while the request is somewhat vague, the lack of particularity is understandable. Moreover, the request, with some effort on the part of the respondent, is not so general to be incapable of being fulfilled. Thus the Board expects the "best efforts" of the respondent in this regard.

9. Having made these rulings, the Board wishes both to emphasize that it is not precluding the complainants' requests for all time, and to justify the part of the subpoena that continues to apply to the records of those employees who have been dismissed within the period January 1, 1971 to January 3, 1974. A balance of convenience must be struck in these matters. We recognize that some "discovering" must go on by way of the subpoena duces tecum and that the courts can afford to take a narrower view because of the availability of a discovery process to civil litigants. A party to a civil proceeding has a right to obtain from his opponent discovery of anything which can fairly be said to be material to enable him to ascertain his own case or to destroy the case set up against him; (see Plymouth Mutual Co-operation and Industry Society Limited v. Traders' Publishing Association, Limited [1906] 1 K.B. 403; Silver Hill Realty Holdings Ltd. v. Minister of Highways for

Ontario [1968] 1 O.R. 357 at p. 360. Although it is of note that not even discovery can be used for the purposes of fishing, see Playfair v. Cormack and Steel (1913), 4 O.W.N. 817, 9 D.L.R. 455 (S.C.)). The following quotation from Williston and Rolls, The Law of Civil Procedure vol. 3, pp. 874-897, reflects the breadth of this right of discovery in the context of the production of documents:-

The classic definition of documents "relating to any matters in question in the action" was given by Brett L.J. in Compagnie Financière du Pacifique v. Peruvian Guano Co..

"The party swearing the affidavit is bound to set out all documents in his possession or under his control relating to any matters in question in the action. Then comes this difficulty: What is the meaning of that definition? What are the documents which are documents relating to any matter in question in the action? In Jones v. Monte Video Gas Co., 5 Q.B.D. 556, the Court stated its desire to make the rule as to the affidavit of documents as elastic as was possible. And I think that that is the view of the Court both as to the sources from which the information can be derived, and as to the nature of the documents. We desire to make the rule as large as we can with due regard to propriety; and therefore I desire to give as large an interpretation as I can to the words of the rule, 'a document relating to any matter in question in the action.' I think it obvious from the use of these terms that the documents to be produced are not confined to those, which would be evidence either to prove or to disprove any matter in question in the action; and the practice with regard to insurance cases shews, that the Court never thought that the person making the affidavit would satisfy the duty imposed upon him by merely setting out such documents, as would be evidence to support or defeat any issue in the cause.

The doctrine seems to me to go farther than that and to go as far as the principle which I am about to lay down. It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may - not which must - either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words 'either directly or indirectly,' because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences: the question upon a summons for a further affidavit is whether the party issuing it can shew, from one of the sources mentioned in Jones v. Monte Video Gas Co., 5 Q.B.D. 556, that the party swearing the first affidavit has not set out all the documents falling within the definition which I have mentioned and being in his possession or control."

Blackburn J. in Hutchinson v. Glover, said:

"Everything which will throw light on the case is prima facie subject to inspection."

In Board v. Thomas Hedley & Co., the plaintiff claimed damages for negligence alleging that the defendants had manufactured and sold a dangerous cleaning product which she had used and as a result thereof had contracted dermatitis on both hands. The plaintiff applied for a further and better affidavit disclosing 'all complaints and other documents relating thereto' received by the defendants after the date she had purchased the product. Denning L.J. said:

"Once it is held that evidence of dermatitis suffered by subsequent users would be admissible because it is relevant to the issue whether the product was dangerous, it follows that the documents relating to complaints of subsequent users ought to be disclosed, because they may fairly lead to a train of inquiry enabling the plaintiff to advance her case."

Documents which may throw light on the case must be produced even if the documents would be inadmissible in evidence. In Canada Central Ry. v. McLaren, Spragge C.J.O. stated:

"...as was said by Blackburn, J., in Fenner v. The London and South-Eastern R. W. Co., L.R. 7 Q.B. at 769: 'It is not necessary that the documents should be in themselves evidence' to entitle the opposite party to their production. And the converse of this is probably true, that it does not follow, from a party being entitled to the production of documents in her adversary's possession, that the contents of these documents are in themselves evidence."

Documents taken individually may not be relevant but when taken together may be material. In Delap v. C.P.R., the plaintiff claimed under an alleged oral agreement, the existence of which was denied by the defendant. Most of the negotiations took place between the plaintiff's solicitor and the defendant's solicitor. It was contended that several hundreds of letters between the plaintiff and his solicitor were irrelevant. Middleton J. said:

"Taken individually, it is quite possible that each letter may be said to be irrelevant. Taken collectively, the negative evidence which would be afforded by the complete absence of all reference to the alleged agreement may be of the greatest possible moment, particularly if a situation is developed in which such an agreement, if it existed, would naturally

be mentioned. It seems to me clear that all these letters are subject to production."

And accordingly, in light of this perspective we are prepared to let the subpoena stand in relation to the documents relating to dismissed employees, although we are in no way prejudging the admissibility of all such material at this time.

8. However, against this need to discover is the respondent's interest in not being put to an onerous and potentially embarrassing revelation of all of its employee records and bank deposits, and so, as indicated above, we have cut back the subpoena as it relates to such records of all employees. A substantial number of irrelevant but confidential matters are likely to be revealed in this material and it is not clear that the complainants cannot advance their primary objective through a careful cross-examination of the respondent's officials. Thus, for the moment, the balance of convenience tips in the respondent's favour on items (1) (in part) and (2) as described above, and the subpoena is hereby so amended.

6589-74-M: The Religious Hospitallers of Hotel Dieu of St. Joseph of the Diocese of London in Ontario at Windsor (Employer) v. SERVICE EMPLOYEES' UNION, LOCAL 210 (Trade Union).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: L. P. Kavanaugh and D. G. Baker for the employer; T. Wohl and B. Janisse for the trade union.

DECISION OF THE BOARD: October 28, 1974.

1. This is a reference pursuant to section 96 of The Labour Relations Act where the Minister of Labour has referred to the Board the question as to whether he has the authority under the Labour Relations Act to appoint a conciliation officer.

2. The relevant facts precipitating the question of the Minister's authority are basically a matter of agreement between the parties. It appears that the employer and trade union through their representatives entered into negotiations with a view to renewing a collective agreement expired on May 31, 1974, covering a service unit of employees. Almost concurrently with these negotiations was the negotiation by the parties of a renewed agreement covering the office and clerical employees (and since consummated on August 23, 1974). It appears that there was some discussion during the negotiation of the office agreement that a certain employee classified as an elevator operator be transferred out of the

office unit and be treated for collective bargaining purposes as a member of the service unit. There was some dispute by the parties at the hearing as to whether the status of the elevator operator was discussed during the negotiations of the service agreement. The Board questioned the relevance of this matter to the issue before us but permitted the parties to adduce viva voce evidence with respect to that particular disputed fact.

3. On June 5, 1974, a Memorandum of Agreement was executed by representatives of both the employer and the trade union the relevant portions of which read as follows:

"BETWEEN:

THE RELIGIOUS HOSPITALLERS OF
HOTEL-DIEU OF ST. JOSEPH OF THE
DIOCESE OF LONDON

(Hereinafter called the
"Hospital")

- and -

SERVICE EMPLOYEES' UNION, LOCAL 210 (Service
Unit)

(Hereinafter called the "Union")

1. The undersigned, being members of the Union's Negotiating Committee and the Hospital's Negotiating Committee, confirm that the contents of this Memorandum of Agreement constitute the Agreement made between them this date and the undersigned hereby undertake to recommend the contents of this Memorandum of Agreement for acceptance, ratification and confirmation by the parties whom the undersigned represent....

The undersigned acknowledge that this Memorandum of Agreement includes the items which the undersigned have resolved during the course of negotiating for a collective agreement to be made between the parties and that there are no other items in dispute between the parties.

SIGNED FOR THE UNION

6 signatures

SIGNED FOR THE HOSPITAL

2 signatures"

4. Subsequent to the execution of this document a ratification vote was held where the employees represented by the trade union appear to have endorsed the negotiation committee's recommendations. It also appears that the results of the ratification vote were communicated orally to the representatives of the employer. It was indicated to the Board that the employer endorsed the terms of settlement negotiated by their representatives pursuant to the memorandum of agreement.

5. Thereafter the parties exchanged correspondence with regard to clarifying the language of the agreement and removing any typographical irregularities prior to engrossing a formal document to be executed by the parties. On August 6, 1974, the trade union notified the solicitors for the employer as follows:

"August 6, 1974.

Mr. Leonard Kavanaugh
McTague, Clark, Holland, Whiteside
Barristers and Solicitors,
Canada Trust Building,
Windsor, Ontario.

Dear Mr. Kavanaugh:

RE: Hotel Dieu Hospital and Service Employees'
Union, Local 210 - Service Unit

I have reviewed the copies of the collective agreement between the above mentioned parties, which you sent to our office on June 27, 1974, and I wish to point out and request the following changes.

1. Page 12 Article 9.05(b) - Last line "Then" to be "Than"
2. Page 29 In Witness Whereof - First line "cause" to be "caused"
3. Schedules A,B,C,D,E,F, - Initial rate for Linen Helper should be \$485.00, \$544.00, \$596.00, \$631.00, \$664.00 and \$674.00
4. Schedule "G" should be replaced with the wording found on the enclosed check-off card.

Sincerely,

signature

Business Agent."

And in reply, the solicitor for the employer indicated the following:

"14th August, 1974.

Service Employees' Union,
Local 210 - 3905 Tecumseh Road East,
Windsor, Ontario.
N8W 1J4

Attention: Mr. Bruce Janisse,
Business Agent.

Dear Sirs:

RE: HOTEL DIEU HOSPITAL AND SERVICE
EMPLOYEES UNION - SERVICE UNIT

Further to your letter of August 6th last, and further to our telephone conversation on August 9th last, I have attended to the suggested amendments to the collective agreement in accordance with our said discussion and enclose two copies of pages 12, 29 and 37 which contain amendments to article 9.05(b), the attestation clause and Schedule "G". These are being sent in replacement of corresponding pages sent to you June 27th, 1974.

I am proceeding to prepare bound copies for execution by the parties and have been advised by Mr. Baker that arrangements have been made for the parties to meet for this purpose on the Hospital premises, August 21st, 1974 at the hour of 10:00 a.m.

Yours very truly,

signature

Leonard P. Kavanaugh."

6. On August 21, 1974 an appointment was made by the parties to meet and execute a formal document incorporating the memorandum of agreement and the amendments made thereto and thereby conclude a collective agreement. At that meeting, the representatives of the trade union refused to execute the formal document until the matter of negotiating a wage classification for the elevator operator was settled. Counsel admitted to the Board that the trade union had simply "failed or forgotten" to negotiate the same prior to the entering into of the memorandum of agreement of June 5, 1974. Counsel for the employer submitted to the Board that the employer at all material times was prepared to discuss the matter of the elevator operator's wage classification but without prejudice to

the existence of a consummated agreement pursuant to S1(1)(e) of the Labour Relations Act!

7. The issue before us is whether the documents submitted in evidence before the Board constitute a collective agreement for purposes of Section 1(1)(e) of the Act. Or, was failure by the parties, in the circumstances heretofore delineated, to execute a formal agreement evidence that no collective agreement was entered into for purposes of the Act?

8. Counsel for the trade union argues that no collective agreement was entered into because the document entitled "memorandum of agreement" only authorized the signatories thereto to recommend acceptance, ratification and confirmation of the terms of settlement by their principals. Or, in other words, the document should not be interpreted to be binding on the principal parties "subject to ratification." (see; Re United Steelworkers and Wabi Iron Works Ltd. (1970) 21 LAC 372 at p. 373). Counsel also argued that since a collective agreement must be a document in writing duly executed by the parties thereto and since the only evidence of acceptance of the terms of settlement was by the oral communication of the results of the ratification vote, a mandatory requirement necessary to constitute a collective agreement was absent.

9. Counsel for the respondent argued that the memorandum of agreement was duly executed by authorized representatives of the parties and thereby bound their principals to the terms of settlement negotiated on June 5, 1974. In any event, by their representatives constituted the necessary written documentation required for purposes of Section 1(1)(e) of the Act.

10. On the question as to whether merely the execution of the memorandum of settlement by itself constituted a collective agreement we reject the submissions made by counsel for the employer and adopt by incorporating the reasoning of the Board as set out in the Versa Services Limited Case OLRB M.R. April 1972 306 at p. 307;

"While it is argued that the memorandum of settlement itself constituted a collective agreement we are unable to agree with that submission because under paragraph 2 of the Memorandum of Settlement it remained for the representatives to recommend complete acceptance to their principals and it is reasonable to assume that in order to conclude the agreement the principals were required to indicate their acceptance."

11. Nevertheless the Board has often stated that more than one

document or an exchange of documents may constitute a collective agreement for purposes of the Act provided they are duly executed (see; Canada Machinery Corporation Limited 61 CLLC ¶16,194 at p. 919,920; Foundation Company of Canada Case 57 CLLC ¶18,078 at p. 1651). In the instant case, the Board finds that the subsequent correspondence between the parties resolved the two outstanding matters necessary to make a collective agreement in accordance with the terms of settlement. That is to say, we are satisfied that the correspondence amounted to both acceptance in writing of the memorandum of agreement by the principals and agreement on the actual wording of the formal document to be executed. In this regard, the Board refers once more to the reasoning of the Board in the Versa Services Limited Case (supra) at page 311;

"We conclude that notwithstanding that the actual collective agreement document was not signed that there was in fact a collective agreement in writing between the parties which comprised the first draft agreement and the letters which we have set out. This Board has long held that a series of documents in writing signed by the parties are capable of constituting a collective agreement. (see; e.g., Operative Plasterers and Cement Masons International Association of The United States and Canada, Local 48 v. Crestile Limited [1967] April OLRB M.R. 41 at p. 44).

In a like manner the Board finds that the subsequent correspondence where the parties resolved differences with respect to clarifying the language of a formal agreement was acceptance by duly authorized representatives of the terms of a collective agreement. In other words, we are satisfied that at that juncture the parties entered into a collective agreement within the meaning of the Act. The requirement to execute a formal document was thereby rendered superfluous in light of the duly executed documentation filed before us indicating that there were no outstanding matters inhibiting the execution of the collective agreement. It therefore follows that by the time the trade union had realized its "failure" to negotiate a wage rate for the elevator operator it had already entered into a collective agreement. Indeed, having regard to the failure of any of the documents to mention or make reference to the matter of the yet to be negotiated wage classification we are constrained from concluding there were any outstanding matters in the way of consummating a collective agreement. (see; Regina v. Weatherill ex parte International Chemical Workers' Union, 68 CLLC ¶14,132). In any event, the Board is quite satisfied that the failure of a document purporting to be a collective agreement to contain articles pertaining to wage classifications does not make that document any less a collective agreement for purposes of Section 1(1)(e) of the Act. (see for example; The Duplate Canada Limited Hawkesbury Division Case OLRB M.R. April 1970, 127 at p. 131).

12. In light of the foregoing, the Minister is advised that he does not have the authority to appoint a conciliation officer in that the parties have entered into a collective agreement within the meaning of Section 1(1)(e) of the Act.

(INADVERTENTLY OMITTED FROM THE JULY 14, 1972 MONTHLY REPORT).

1499-71-U: JOHN BOURGEOIS (Complainant) v. Local 721, International Association of Bridge, Structural & Ornamental Ironworkers (Respondent).

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: David R. K. Rose for the complainant; Jay B. Waterman for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOR AND BOARD MEMBER J. D. BELL: July 14, 1972.

1. Having regard to the representations of the parties herein and taking into account the provisions of Section 93 of The Labour Relations Act, the Board directs that the style of cause in this application be amended by deleting the name "James David Johnston President of Local 721, International Association of Bridge, Structural & Ornamental Ironworkers" appearing as the name of the respondent in this application and substituting therefor the name "Local 721, International Association of Bridge, Structural & Ornamental Ironworkers."

2. This is a complaint filed under Section 79 of The Labour Relations Act wherein the complainant, John Bourgeois, alleges that he has been dealt with by the respondent contrary to the provisions of Section 60 of the said Act.

3. The incidents giving rise to this complaint appear to be as follows: On July 9, 1971, John Bourgeois received a referral slip at the local union hall signed by the dispatcher Robert Armstrong which indicated that he was to report for work on a project involving change-over work at the Ford plant in Oakville. Upon attending the work site, the next morning, Bourgeois signed a TD 1 slip with his prospective employer, Mustang Contractors Limited, (hereinafter referred to as Mustang), in the company trailer. However, prior to actually commencing work, he was informed by James Dowd, the job steward on the project, that he could not go to work because the latter, upon checking with James Johnson, the local union president, discovered that the complainant's name did not appear on the list which had previously been prepared, setting out the names of the members assigned for work on this project. As a result Bourgeois left the work site and he now seeks compensation for the resultant loss of income.

4 The evidence of John Bourgeois disclosed that he is a journeyman ironworker and a member in good standing in the applicant for 15 years. The witness further testified that he received a phone call on Tuesday evening of the previous week from John Arsenault, the foreman with Mustang and was informed by him that he (Arsenault) would make a specific request to the local hall for the complainant's services at the Ford project slated to commence for July 10, 1971. The witness further testified that he had personally phoned the union hall Thursday or Friday of that previous week to determine whether Arsenault had requested him. In the words of the witness the following transpired: "I talked to Armstrong, the dispatcher to see if I had been requested who said that Johnson wanted to talk with me. He (Johnson) flatly told me there was no way I was going to work at the Ford plant. I don't know if I informed him that I was specifically requested. His reason was I just quit a job."

5. The evidence of John Arsenault in this regard is that he did in fact subsequently speak to Armstrong at the union hall and at that time indicated that he wanted Bourgeois "as a pusher". The witness could not remember when this conversation occurred nor could he recall if there were one or two occasions in which this request was made. The request itself was never reduced to writing and the witness's evidence was to the effect that "my procedure was always to do it over the phone."

6. James Dowd testified that on the morning of July 10, 1971, John Arsenault informed him that three extra men had shown up for work at the Ford job site. As a result, the witness immediately phoned the union hall and informed James Johnson of the situation. A check of the names on the slips received by the witness with the list of names on the list read to him by Johnson, revealed that two names did not correspond. These names were John Bourgeois and Frank Bergeron. In addition, another employee had attended the work site whose name did not appear on the list. However, the witness did not receive a slip from this employee. The witness was then told by Johnson that these three employees were to be instructed not to start work since they were not on the list. Upon advising the three men of the situation both Bourgeois and the other employee subsequently left the site. Bergeron, however, strongly objected and despite instructions to the contrary from Dowd, he did in fact go to work for Mustang that morning.

7. The evidence of Frank Bergeron is to the effect that he received a slip signed by Armstrong at the union hall on July 9, 1971. Upon reporting for work at the Ford plant he gave the slip to Dowd, and upon signing up with the company was told by Arsenault to go to work. Upon being told of the situation by Dowd, the witness was adamant in his entitlement to work on the site and made it very clear to all concerned that he would not comply with the instructions emanating from Johnson.

8 The evidence of Robert Armstrong indicates that matters at the

union hall, with many members milling about, on July 9, 1971, were in a state of confusion as the result of a strike in the area. In the execution of his dispatching duties, the witness testified that it was his normal practice to keep a running list of the names of the members at the same time they were issued slips. Although he recalled issuing a slip to Bourgeois at this time, he could not remember whether his name was put on the list. Moreover, he stated that the list in question was subsequently lost. The witness also testified that he had received a phone call prior to July 9, 1971 from Arsenault who had specifically requested the services of Bourgeois. However, he could not recall whether or not Arsenault indicated the particular job for which the complainant's services were sought. The witness further stated that the normal practice was to honour the employer's request for a particular man, although in many cases this practice was not lived up to. As regards the list itself, he indicated that in the absence of a specific request and provided that the man qualified to do the work, assignments would be filled on the basis of the member who registered first and hence at the top of the list. An exception to this procedure would occur in relation to sick members who could not be available for the particular assignment at the time and whose name therefore would remain on the top of the list. Once the member's name was reached, he would be called to attend at the hall where he would be issued with the slip.

9. The evidence of James MacDonald, a member of the respondent for 16 years, disclosed that he was employed at the Ford plant by McGuinness Conveyors Ltd. on July 9, 1971 after obtaining a slip at the hiring hall on the previous Thursday. After starting work on Saturday, July 10, 1971, he was told by Bourgeois that the steward Dowd had informed him that as a result of a telephone conversation the latter had with Johnson, Bourgeois could not start work. The witness then approached Dowd in this regard and informed him that Bourgeois had a bona fide request from the job superintendent for the job one week before and has also the necessary referral slip sanctioned by McIsaac, the business manager and Herbert MacDonald the local business agent for that project. The witness then instructed Dowd to so inform Johnson by telephone and to straighten the matter out. About ten minutes later, according to the witness, Dowd returned shaking his head and stated that Bourgeois could not start work. the witness then stated that he informed Dowd that "there will be trouble over this and that Johnson is overstepping his bounds." The witness subsequently attended at the union hall on Monday, July 12, 1971, at 7:00 a.m. prior to starting work, where he observed Johnson hand Mundan Smith a referral slip for the Ford plant. Upon stopping Smith as he was leaving the building he was shown the slip and noted that the word "welder" appeared on it. The witness then approached Johnson in the hall and in his words, "I asked him how he (Johnson) could justify sending another friend - he was putting all his friends on this gravy job - who was not a qualified welder and who had just quit a job that previous Thursday at Pilkington Glass."

10. Herbert MacDonald testified that on July 10, 1971 he occupied the dual positions of Recording Secretary and Business Agent for the west district of Local 721. He stated that he had received a list of employees from Arsenault on the previous Tuesday, viz. July 6, 1971, which included Bourgeois' name and that he had discussed the list with Johnson at this time. He further stated that he had received phone calls from both Bourgeois and Arsenault on the evening of Thursday, July 8, 1971, wherein he agreed that upon Arsenault's recommendation for Bourgeois as foreman, the latter could go to work. However the witness was delayed in getting to the project until 10:15 a.m. on Saturday July 10, 1971, where he discovered that Bourgeois had already left the project. A meeting with the Mustang officials was subsequently arranged for 1:30 p.m. later that day with the witness and his superior, Allan McIsaac, the business manager. The witness stated that at this time "we clarified that Bourgeois was properly entitled to work." When asked if the issue was then settled at this point the witness remarked that it was, as far as he was concerned, but he still felt that the company would nevertheless not call Bourgeois to work because it didn't want any further problems. Upon further probing on cross-examination, the witness reluctantly conceded that the real problem confronting the company was Johnson's alleged refusal to permit Bourgeois to work. In this regard, the witness stated that Johnson occupied two positions viz. President of the Local with authority over policy matters, affecting the general membership-at-large and, also business agent for the east district of the union and, as such, responsible for the day to day business for that district. In this latter classification, the witness would include the task of the assignment of members to particular jobs. McDonald felt that the assignment of members to the Ford project at Oakville would initially fall within his own area of responsibility in his capacity as business agent for the west district of the union. Ultimate authority in this regard, he stated, rested with McIsaac. In spite of this situation, the witness nevertheless felt that Johnson exerted the real control in this area. As a result, the witness concluded that the company, although very desirous of obtaining Bourgeois' services, nevertheless would not risk any disruption of work on the project by the hiring of the complainant in the face of Johnson's outstanding instruction to Dowd that Bourgeois not be permitted to work, notwithstanding the fact that he had been properly cleared and dispatched by the union and assurances to this effect were given by both the witness and McIsaac.

11. The evidence of Allan McIsaac is to the effect that he occupies the position of Business Manager and Financial Secretary in the respondent. This is an elected office which is voted upon by the membership-at-large. The highest governing body within the union and to which he reports between general membership meetings, is the Executive Committee. The witness stated that on Friday, July 9, 1971, he was assisting Armstrong in the dispatching activities which were being carried on at the union hall. He indicated that at this time there was a high unemployment rate

in the union and matters were in a state of turmoil when the union received an order for men at the Ford plant during its annual changeover. He specifically recalled personally handing a referral slip to Bourgeois at this time and stated that shortly thereafter he received a telephone call from Arsenault enquiring about Bourgeois to ensure that the latter had been dispatched to the work site in the capacity of a foreman. In view of the policy of the union not to interfere with the specific request of an employer in these circumstances, the witness stated that "I didn't think there would be a problem."

12. The witness further testified that on Saturday afternoon July 10, 1971, he was called to the Ford job site on another matter and while engaged in conversation with certain of the Mustang personnel, (including Arsenault) an inquiry was made in regard to Bourgeois not being able to start work. The witness indicated that he knew of the situation beforehand from Dowd, and "I assumed that a mistake was made that morning and that it would be corrected as of then." The witness then stated "I assured them (i.e. the Mustang personnel) he could start work and to assign him on Monday. The company was worried about the feelings of some of the men on the job and was afraid if they took him back, there may be a work stoppage but I could give no guarantee." The witness testified that he concluded that a simple mistake had occurred at the union hall and that the matter would be rectified on the following Monday as Mustang would be hiring additional men at this time.

13. The witness subsequently attended the union hall at 8:00 a.m. on Monday, July 12, 1971, where a state of confusion again existed with members milling about and arguing while awaiting to be dispatched. Upon approaching Johnson, the witness testified that "I suggested that he send Bourgeois out to the Ford plant. Dave (Johnson) informed me that the matter would be handled by the Executive Committee. I assumed that the company probably would contact Bourgeois." In this connection, the witness indicated that he did not pursue the matter further as Johnson who had investigated the case was of the opinion that Bourgeois was "not in rotating order". The witness further stated that he is not a member of the Executive Committee. Johnson is a member of this committee and in his capacity as President is empowered to call Executive Committee meetings. When asked what further action if any was taken, the witness replied that he was not sure if a special meeting of the Executive Committee was called in this regard and even if such a meeting was held, he would not necessarily be informed of it.

14. Although the witness testified in his examination-in-chief, that Bourgeois, in his opinion, did not go back to work because the company refused to call him back or as he put it in his initial cross-examination, - "it was up to them", the witness replied in the affirmative when subsequently questioned by Counsel for the respondent as to whether or not there was anything further to be done within the union in order to qualify

Bourgeois for the job. McIsaac's exact words were: "Yes, the company was concerned that Johnson should clear up the problem - that's why I suggested to Johnson to send Bourgeois out." When questioned further as to whether he, in his capacity as business manager was entitled to instruct Johnson to send Bourgeois on the job, the witness replied that "I had the authority but how effective that was, is questionable since he (Johnson) could call an Executive Committee meeting of any time." In the concluding portion of his cross-examination, the witness further stated that it was nevertheless the past practice of the union that the initial decision of the dispatcher regarding the assignment of a member as evidenced in the referral slip would stand pending an investigation into the matter, which if warranted, would result in the countermanding of such decision at the Executive Committee meeting.

15. The only evidence called in defence was elicited from the President of the respondent, James David Johnston, who testified that he received a phone call from Dowd on the morning of July 10, 1971, advising that too many men were issued referral slips for the Ford project. As Dowd read out the names of the members in attendance at the job site, the witness compared each name with the "Out of Work" list of names he had previously prepared, wherein he ascertained that of the members who had been issued referral slips Bourgeois and Bergeron were out of work the least amount of time. As a result, he concluded that these men could not be retained on the project. In the witnesses' own words, "I then told Dowd that these two employees couldn't start. At that time I knew nothing of a specific request for him (Bourgeois)." The witness further stated that in the situation where too many men were issued referral slips, the policy was to call off the person out of work the shortest amount of time, provided that there was no specific request by the employer for a named individual to act in a supervisory capacity on the site. In this regard, John testified that "if I knew about the specific request for Bourgeois, I would have told Dowd okay let him go ahead and I would have then looked for the next "least time" man."

16. The witness further stated that he had only one telephone discussion with Dowd on the morning of July 10, 1971, and no mention of the specific request was made to him at this time. In contrast to the evidence of Bourgeois, he denied having any conversation with the latter the previous week and moreover stated that he had not spoken to him for approximately one year. He could not recall discussing Arsenault's list which included the name of the complainant with Herbert MacDonald on July 6, 1971. The only recollection he had of a list was that one had been waived at him during the chaos that reigned in the union hall on Friday afternoon, July 9, 1971. He stated, however, that only the entitlement of Larry Cassidy, a personal friend was questioned at this time. Upon investigating the matter, he discovered that Cassidy was still employed on another project, and consequently ruled that Cassidy should not be assigned to the Ford project.

17. The witness admitted to issuing Mundan Smith a referral slip for the Ford project prior to his confrontation with James MacDonald, at the union hall, on the morning of July 12, 1971. Matters, in his opinion, were still in a hectic stage and the witness could not recall if MacDonald, who was doing virtually all of the talking, had specifically raised the problem in relation to Bourgeois. As regards the propriety of issuing the slip to Smith, the witness stated that there were no certified welders within the union who were unemployed at the time. He personally knew that Smith had performed welding functions on previous projects but there were no records at the union hall disclosing that he was uncertified. In any event, the witness stated that the union has utilized in the past uncertified but experienced welders during the changeover periods at the auto plants, in spite of the apparent violation of the Canadian Welding Bureau regulations in this regard.

18. The witness had no recollection of the conversation regarding Bourgeois between himself and McIsaac, on the morning of July 12, 1971, as attested to by the latter. In the words of the witness, "Nobody spoke to me about bringing him back after July 10. I didn't recall McIsaac's conversation with me that morning. The only person I talked to that following week was Bourgeois himself and he indicated that he might file charges against me."

19. The witness conceded that there were tensions between himself and the MacDonalds. He also admitted to experiencing tensions with McIsaac, "but not in the same manner." He bore no ill-will towards Bourgeois, nor had he ever intended to discriminate against him in any way. He never identified the complainant with any of the factions apparent in the membership at this time. Further, the witness indicated that as opposed to discriminating against the complainant, he was instrumental in the subsequent appointment of Bourgeois to a strike committee, a function exclusively reserved to the personal decision of the President pursuant to the by-laws of the respondent.

20. Having regard to all of the evidence, we are satisfied that the respondent has an established practice at its hiring hall of honouring specific requests by the employer for named members to act in a supervisory capacity without regard to the general criteria that jobs would be assigned to qualified members who were out of work for the longest period of time.

21. The first issue to be resolved by this Board therefore is to determine whether or not Johnson while acting on behalf of the respondent, knew at the time of his telephone instructions to Dowd on the morning of July 10, 1971, that Arsenault on behalf of Mustang had made a specific request to the respondent for the supervisory services of Bourgeois. The Board has carefully reviewed the totality of the evidence in this regard, and we are not satisfied on the balance of probabilities that

Johnson, and hence the respondent, knew of the specific request at the time of issuing his instructions. Our finding in this regard is further substantiated upon examining the referral slip issued to Bourgeois on July 9, 1971. (Exhibit #1 in these proceedings). Opposite the word "Classification" appearing on the left hand side of this slip, appear the "inked-in" letters "IW". The only direct evidence on this point is that of Johnson who stated that the letters stand for "Ironworkers". He further indicated that it was the common practice that where the union was made aware of a specific request by an employer for a named member to work as a foreman or pusher then such supervisory designation would have been specifically indicated on the slip.

22. The next issue to be resolved therefore is whether the respondent in failing to rectify the situation, once the problem concerning Bourgeois' assignment came to light, acted in a manner that was "arbitrary", discriminatory or in bad faith" in the representation of the complainant contrary to the provisions of Section 60 of the Act. The evidence on this point is confusing, and as is apparent from the facts as set out in this decision, conflicts substantially in many particulars. However, regardless of whether or not we prefer the evidence adduced from the witnesses called by the applicant to that adduced by Johnson on behalf of the respondent, it is clear that the complainant willingly or unwillingly was caught in a power struggle within the union.

23. On the one hand, if we are to accept the evidence of McIsaac to the effect that he informed Johnson on Monday, July 12, 1971, why did McIsaac not pursue the matter further? We find that McIsaac was well aware of the seriousness of the situation at this time and he cannot avoid responsibility in this regard, simply by saying that it was up to Mustang to call Bourgeois on the job. Understandably, he could not have given the company a complete guarantee that there would be no disruption of work. However, he did know that paramount in the minds of these Mustang officials was the fact that Johnson's initial instructions taking Bourgeois off the job were not countermanded. Even if we were to accept the fact that he was not entitled to give such an assurance in these circumstances, surely then he had no reason to wash his hands entirely of the whole affair and to assume that the company, in the protracted period of a changeover situation, would risk a disruption in work by itself contacting the complainant and putting him to work in these circumstances. In this regard, the provisions of Section 88(2) of the Act are relevant and provide as follows:

"Any act or thing done or omitted by an officer, official or agent of a trade union or council of trade unions or employers' organization within the scope of his authority to act on behalf of the union, council or organization shall be deemed to be

an act or thing done or omitted by the union, council or organization."

24. If on the other hand, we were to accept the evidence of Johnson to the effect that he only became aware of the situation from discussions with the complainant himself the following week, then why was there not something done at this time in light of the clear and well-established practice of the union in this regard as indicated in Paragraph #20 herein? The evidence of James MacDonald, discloses a vague reference to the fact that a union "trial" concerning Bourgeois' accusations was conducted but he nevertheless stated that he was never called to testify although he was available. Moreover there is no evidence before us that any Executive Meeting in this regard was in fact called in this regard.

25. Either way one views the evidence, it becomes abundantly clear that the respondent through the unresponsiveness of either Johnson or McIsaac or a combination thereof, acted in these circumstances in an "arbitrary" manner, to say the least, in the representation of John Bourgeois as regards his entitlement to be assigned work with Mustang at the Ford job site during the week commencing July 12, 1971. Even assuming that a bona fide mistake was made in the referral slip issued to Bourgeois which identified him as an ironworker and not as a foreman or pusher, surely the complainant's removal from the job at a time when Mustang required additional employees, flies in the face of the practice of the respondent to honour referral slips once issued. (On this latter point, see the uncontradicted evidence of McIsaac in Paragraph #14 herein).

26. Having regard therefore to all of these circumstances, and for the reasons above stated, we find that the complainant John Bourgeois was dealt with by the respondent contrary to the provisions of Section 60 of the Act.

27. The Registrar is accordingly directed to list this matter for continuation of hearing to enable the parties to adduce evidence and submit representations concerning the determination of the remedy, if any, to be effected by this Board pursuant to Section 79(4)(c) of the Act.

DECISION OF BOARD MEMBER O. HODGES: July 14, 1972.

1. I dissent.

2. The complainant in my view had an obligation to verify the work he had been assigned when the referral slip was issued to him. The least one may be expected to do is show interest in the job assigned. On the evidence, had the referral slip indicated "pusher" or "foreman", Bourgeois would have started work.

3. It appears strange that the steward Dowd was not made aware by the foreman Arsenault that Bourgeois was to start as a "pusher" or "foreman".

4. That Bourgeois was a pawn or dupe in some power play is sheer speculation. There is a power struggle in every democratic organization, if the organization is alive. After carefully considering all of the evidence and in the particular circumstances of this case, I am unable to join with the majority in finding the respondent or its officers responsible for the difficulty in which Mr. Bourgeois found himself at the material times. He is the master of his own misfortune, and entitled to no relief for the problem his own carelessness created.

5. I find no violation of S60 of the Act and therefore dismiss the complaint.

DECISION OF THE BOARD:

September 7, 1972.

1. By letter dated August 16, 1972, the respondent has requested the Board to reconsider its decision in this matter dated July 14, 1972, wherein the Board took into account evidence of certain actions or omissions which occurred after July 9, 1971, the date alleged by the complainant as the time at which he had been dealt with by the respondent contrary to the provisions of The Labour Relations Act.

2. A perusal of the file in this regard indicates that the allegation is in reference to "on or about July 9, 1971", and is not expressly limited and confined to that specific date. Further, a review of our notes fails to disclose any specific objection raised by the respondent in this regard to the Board entertaining such evidence during any of the hearings held in this matter on March 17, May 4 and June 20 of 1972, nor was it alleged at this time that the respondent had been taken by surprise. Indeed, our notes further reveal that the respondent itself adduced evidence concerning events which transpired subsequent to July 9, 1971. It was on the basis of the totality of such evidence that the Board reached its decision in this matter dated July 14, 1972.

3. The respondent has not alleged that any new evidence is now available to it which was not available at the Board hearings in this matter, and in these circumstances, we accordingly see no reason to vary or revoke our decision in this matter dated July 14, 1972, which found that the complainant was dealt with by the respondent contrary to the provisions of Section 60 of the Act.

4. The respondent, however, does allege that "as a result of inquiries made since the Board's decision, we find that there is definitely evidence that Mr. Bourgeois was offered employment at the Ford project during the week of July 12, 1971, which he refused." In our opinion, such evidence

would clearly be relevant to the issue of determining the remedy to be effected by this Board pursuant to the provisions of Section 79(4)(c) of the Act, at the continuation of hearing of this matter on September 7, 1972.

DECISION OF THE BOARD: September 14, 1972.

1. For the reasons delivered orally at the continuation of hearing on September 7, 1972, the request of the complainant that the Board reconsider its initial decision in this matter dated July 14, 1972, is denied.

2. Having regard to the totality of the evidence and to the representation of the parties thereto concerning the remedy to be effected by this Board pursuant to the provisions of Section 79(4)(c) of The Labour Relations Act, the Board directs the respondent forthwith pay to John Bourgeois as compensation for loss of wages, incurred from July 12, 1971 to July 22, 1971 in his capacity as "Pusher", the sum of \$1,136.64.

DECISION OF BOARD MEMBER O. HODGES: September 14, 1972.

For the reasons as set out in my dissent in this matter, I would not have ordered any compensation to John Bourgeois.

2405-72-R: Hotel and Restaurant Employees Union, Local 743, Windsor, Ontario, affiliated with Hotel and Restaurant Employees and Bartenders International Union: AFL-CIO (Applicant) v. McDONALD'S RESTAURANTS OF CANADA LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: O.B. Shime, Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: T.E. Armstrong, Q.C., and P. Robinson for the applicant; B.M.W. Paulin, Q.C. and James B. Noonan for the respondent; Mrs. T. Veilleux and William Jones for the objectors.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: October 31, 1974.

1. This application for certification concerns the part-time employees at the respondent's premises at 833 Huron Church Line in Windsor, Ontario, with certain exceptions that are not here material. The history of this application is set out in a previous decision of this Board in a decision dated May 30, 1973. The sole issue remaining is whether only one of the respondent's stores at Windsor constitutes an appropriate bargaining unit or whether the applicant is required to organize all three stores operated by the applicant in the Windsor area.

2. The respondent company operates a chain of restaurants in Canada and three of those restaurants are within the Municipal Courts of Windsor. The applicant trade union had sought to organize all the employees at one of those stores in the Windsor area, and we have dismissed the application insofar as it concerns the full-time employees leaving only the part-time employees.

3. All of the company stores are operated along similar lines without any significant differences in the physical layouts, method of operation or personnel policies towards its employees. Each store has a store manager to implement the company's policies and he is subject to an area supervisor.

4. It is clear from the report of the examiner that consistency among the operation of the various stores is an overriding consideration. For example, the standard of the bun sold from store to store is identical in size, cut, quality and weight. This consistency or sameness throughout the different stores has had its impact on the single store. By creating a standard and simplified policy to be applied throughout, the respondent has reduced the operations of a single store to a very simple or mechanical operation under which all matters are governed by predetermined policies which have issued from the company's head office. This has the effect of permitting each store to operate in an autonomous fashion within predetermined standards or guidelines and requiring only some overall supervision to ensure that the company dictated policies are being carried through. For example, a store manager determines "working hours and schedules in accordance with established company policy". Thus, the standardization of the operation permits individual store decisions or discretion but within prearranged policies or standards.

5. The business pattern of McDonald's is such that it "fits the availability of people who are students better than any other segment of the working population". At Windsor the employment situation is typical. Of all McDonald's operations about seventy-five to eighty per cent of the employees are between the ages of sixteen and twenty-one with another group of short term workers who are a little older. These students and part-time employees work six to nine months with a turn over of three or four times annually. "The turn over rate is three hundred or four hundred per cent."

6. Under section 11(b) of The Labour Relations Act "bargaining unit" means a unit of employees appropriate for collective bargaining whether it is an employer unit or a plant unit or a subdivision of either of them. Clearly each store in Windsor is a subdivision of an employer unit; if there had been only one store in the Windsor area this Board would have considered that single store appropriate for collective bargaining. The issue is not whether the three Windsor stores form a more appropriate bargaining unit but whether the fact

of two additional stores in Windsor detract from the appropriateness of the single store and that is to be determined by an examination of the relationship among the three stores.

7. The Windsor stores are part of the chain and as we have indicated there is a consistency of operations and an application of company practices and policies in the stores. The personnel policies originate from the company's head office and are intended to cover all of the two thousand company restaurants throughout the world - the greatest number of which are in North America. There is no specific policy which would set apart the Windsor area and if the company's personnel policies were to be considered as a factor in determining the appropriate bargaining unit it would tend to support a national or at the very least an Ontario bargaining unit rather than a Windsor bargaining unit.

8. The operations manager oversees the Windsor, London, Kitchener and half of the Toronto Market, and this organizational factor indicates a broader bargaining unit than the Windsor area. Also, the Windsor area is part of a Detroit-Windsor marketing area so that Windsor again is not a distinct area under this organizational head.

9. There is an area supervisor who is responsible for the Windsor stores and oversees basic operations on a day to day basis within the company's policy. He supervises the store manager who hires and fires staff with the approval of the area supervisor. The store manager also assigns and transfers employees within the store. It is clear, however, that both the area supervisor and the store manager function within the confines of the company's policies so that in examining the relationship between the area supervisor and the store manager there is nothing to indicate a special relationship for the Windsor stores that would set them apart as a distinct and separate functional unit.

10. The only other factor which demonstrated a relationship is the interchange among employees at different stores. However, while there is some interchange, the majority of the recorded instances seem to have taken place for special events. For example, there were a number of crew picnics where crews from one store substituted so as to allow the crews from another store to attend the picnic. Also, some employees trained at one store were transferred to another store which was newly opened. But more important in assessing the relationship created by the transfers is the factor that there is a high turnover of employees. The employer's evidence indicated the turnover rate was three hundred to four hundred per cent a year with employees working for only a six to nine month duration.

11. In these circumstances the transfer of employees has no impact on the day to day operations of the employer. If seniority were to be negotiated transfers would not have any great or real impact on the

seniority of bargaining unit employees and any difficulties arising in those circumstances would be minimal. Moreover, the extent of transfers demonstrated on the record is minimal and does not tend to create such a relationship among the Windsor stores that demonstrate that they should be forged into one bargaining unit or that collective bargaining in one store would have an adverse impact on the operations of the other stores in Windsor.

12. Accordingly having regard to the evidence and the submissions of the parties the Board finds that all employees of the respondent at McDonald's Restaurant located at 883 Huron Church Line, Windsor, Ontario, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except the Swing Manager and persons above the rank of Swing Manager, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

14. A certificate will issue to the applicant.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C. October 31, 1974.

1. I dissent.

2. For reasoning similar to that set out in my dissent in Hotel & Restaurant Employees Union, Local 743 v. Ponderosa Steak House, Board File No. 6122-74-R (as yet unreported) I would find the appropriate geographic unit to be all employees of the respondent at Windsor.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
DURING OCTOBER 1974

BARGAINING AGENTS CERTIFIED DURING OCTOBER

No Vote Conducted

2405-72-R: Hotel and Restaurant Employees Union, Local 743, Windsor, Ontario, affiliated with Hotel and Restaurant Employees and Bartenders International Union: AFL-CIO (Applicant) v. McDonald's Restaurants of Canada Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at McDonald's Restaurant located at 883 Huron Church Line, Windsor, Ontario, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except the Swing Manager and persons above the rank of Swing Manager." (63 employees in the unit). (HAVING REGARD TO THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES).

(1974) 2 OLRB M.R. - PAGE 755.

5198-73-R: Canadian Union of Public Employees (Applicant) v. The Thunder Bay Public Library Board (Respondent).

Unit: "all professional librarians employed by the respondent in the City of Thunder Bay, save and except chief librarian, secretary to the chief librarian, district librarians, stock editor, children's coordinator, and persons regularly employed for not more than twenty-four hours per week." (16 employees in the unit). (WE NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS ENGAGED PRINCIPALLY IN CLERICAL DUTIES OR AS PAGES ARE EXCLUDED FROM THE BARGAINING UNIT EITHER ON THE BASIS THAT THEY DO NOT HAVE A COMMUNITY OF INTEREST WITH LIBRARIANS OR THAT THEY ARE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 87.).

(1974) 2 OLRB M.R. - PAGE 727.

5286-73-R: United Steelworkers of America (Applicant) v. United Asbestos Inc. (Respondent).

Unit: "all employees of the respondent in the Townships of Midlothian and Doon, save and except shift bosses, foremen, persons above the rank of shift boss or foreman, office and sales staff, security guards and students employed during the school vacation period." (12 employees in the unit).

5860-74-R: United Brotherhood of Carpenters and Joiners of America, Millworkers Local 802 (Applicant) v. Packers Super Markets (Ontario) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Windsor, save and except assistant store managers, persons above the rank of assistant store manager, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (33 employees in the unit). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

6119-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Corporation of the Township of Huron (Respondent).

Unit: "all employees of the respondent in the Township of Huron, save and except foremen, persons above the rank of foreman and office staff." (3 employees in the unit).

6202-74-R: United Steelworkers of America (Applicant) v. Beam Building and Supply Co. Ltd. (Respondent).

Unit: "all employees of the respondent at Port Colborne, save and except foremen, persons above the rank of foreman and office and sale staff." (5 employees in the unit).

6216-74-R: Canadian Union of Public Employees (Applicant) v. St. Joseph's Hospital, Hamilton (Respondent) v. Employee (Objector).

Unit: "all lay office and clerical employees of the respondent at Hamilton, save and except supervisors, persons above the rank of supervisor, Professional Medical Staff, Bacteriologists, Biochemists, Virologists, Graduate Pharmacists, Undergraduate Pharmacists, Graduate Dietitians, Undergraduate Dietitians, Student Dietitians, Technical Personnel, Photographers, Methods Analysts, Psychometrists, Psychiatric Clinicians, Technologists, Technicians, Accountants, Employees of Personnel Department, Infection Control Officer, Health Nurse, Confidential Secretaries to the following: Executive Director, Director of Administrative Services, Director of Finance, Director of Nursing, Director of Hospital Services, Medical Director, Administrative Assistant, Director of Laboratories, Director of Radiology, students employed during the school vacation period, persons regularly employed for not more than 24 hours per week and persons covered by subsisting collective agreements with the Civil Service Association of Ontario, Nurses' Association of St. Joseph's Hospital, and Local 786, Canadian Union of Public Employees." (256 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTROENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

6221-74-R: Sheet Metal Workers' Local Union 285 (Applicant) v. Mo-Mek Systems Ltd. (Respondent).

Unit: "all sheet metal workers and sheet metal apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (1 employee in the unit).

(1974) 2 OLRB M.R. - PAGE 642.

6336-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the United Counties of Stormont, Dundas and Glengarry (Respondent).

Unit: "all employees of the respondent in its Home for the Aged in Cornwall, save and except professional and medical staff, graduate nursing staff, undergraduate nurses, maintenance supervisor, kitchen supervisor, housekeeping supervisor, persons above the rank of supervisor, technical personnel, secretary to the Administrator, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (96 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

6348-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the County of Renfrew, Bonnechere Manor (Respondent).

Unit: "all employees regularly employed by the respondent for not more than 24 hours per week in its home for the aged in Renfrew, Ontario, save and except professional and medical staff, graduate nursing staff, undergraduate nurses, maintenance supervisor, kitchen supervisor, housekeeping supervisor, persons above the rank of supervisor, technical personnel, office staff and those employees employed for not more than 24 hours per week." (66 employees in the unit).

6353-74-R: Service Employees' Union, Local 210, Windsor, Ontario, Affiliated with Service Employees' International Union, AFL-CIO-CLC (Applicant) v. Beaver Foods Limited (Respondent).

Unit: "all employees of the respondent employed in the Dietary Department at Kincardine and District General Hospital, Kincardine, Ontario, save and except graduate dietitians, food supervisor, persons above the rank of food supervisor, head chef, office staff, persons regularly employed for not more than 24 hours per week and students employed

during the school vacation period." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6374-74-R: The Canadian Union of Public Employees (Applicant) v. Porcupine Health Unit (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the Porcupine Health Unit, save and except the medical officer of health, the secretary-treasurer, and the following department heads: The Health Inspection Division, Nutrition Division, The Home Care Division, Public Health Nursing Division, Dental Health Division, students employed during the school vacation period and persons presently covered by existing collective agreements between the Porcupine Health Unit and The Nurses' Association Porcupine Health Unit." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6384-74-R: Canadian Union of Public Employees (Applicant) v. The Catholic Children's Aid Society of Hamilton-Wentworth (Respondent).

Unit: "all lay employees of the respondent, save and except office manager and supervisors, persons above the rank of office manager and supervisor, and students employed during the school vacation period." (41 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6423-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. ARC Enterprises (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6424-74-R: Canadian Union of Public Employees (Applicant) v. Muskoka-Parry Sound Health Unit (Respondent).

Unit: "all Clerical employees, Public Health Inspectors, Dental Assistants, Hygienists, Registered Nursing Assistants of the respondent in the Districts of Muskoka-Parry Sound, save and except the Secretary to the Medical Officer of Health, the Secretary to the Business Administrator, employees regularly employed for not more than 24 hours per week and persons covered by a subsisting Collective Agreement between Muskoka-Parry Sound Health Unit and Registered Nurses Association of Ontario." (20 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6430-74-R: United Steelworkers of America (Applicant) v. Daybar Industries Limited (Respondent).

Unit: "all employees of the respondent in Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff." (19 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6446-74-R: Service Employees' Union, Local 210, Affiliated with Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Metropolitan General Hospital (Respondent).

Unit: "all ambulance dispatchers in the employ of the respondent in Windsor, save and except supervisors and persons above the rank of supervisor, and employees covered by subsisting collective agreements." (6 employees in the unit). (ON AGREEMENT OF THE PARTIES).

6447-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. VS Services Ltd (Food Management Services) (Respondent) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener).

Unit: "all employees of the respondent employed in its food management services division in the cafeteria at the Northern Electric Company at London, Ontario, save and except supervisors, persons above the rank of supervisor and chef." (11 employees in the unit).

6452-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Armalux Glass Industries Limited (Respondent).

Unit: "all employees of the respondent in the City of Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (74 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6459-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sillman Company (Northern) Limited (Respondent) v. Labourers' International Union of North America, Local 1036 (Intervener).

Unit: "all construction labourers in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6460-74-R: International Chemical Workers Union (Applicant) v. Kodak Canada Ltd. (Respondent) v. International Chemical Workers' Union, Local 159 (Intervener).

Unit: "all employees of the respondent at its Don Mills plant save and except foremen, those above the rank of foreman, sales and office staff, students employed during the school vacation period, persons regularly employed for not more than twenty-four hours per week and employees working for C.E.S.D." (14 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6462-74-R: Christian Labour Association of Canada (Applicant) v. Versa Care Centres of Ontario Limited operating as Bethel Nursing Home (Respondent).

Unit #1: "all employees of the respondent at the Bethel Nursing Home, 130 Park Avenue, Brantford, Ontario, save and except supervisors, persons above the rank of supervisor, graduate and registered nurses, office staff, and persons regularly employed for not more than twenty-four hours per week." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of the respondent at the Bethel Nursing Home, 130 Park Avenue, Brantford, Ontario regularly employed for not more than twenty-four hours per week save and except supervisors, persons above the rank of supervisor, graduate and registered nurses and office staff." (8 employees in the unit).

6463-74-R: Christian Labour Association of Canada (Applicant) v. Versa Care Centres of Ontario Limited operating as Bethel Nursing Home (Respondent).

Unit: "all graduate and registered nurses of the respondent at The Bethel Nursing Home, 130 Park Avenue, Brantford, Ontario, regularly employed for not more than twenty-four hours per week save and except supervisors and persons above the rank of supervisor." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6464-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. National-Standard Company of Canada, Limited (Respondents).

Unit: "all employees of the respondent employed in its plant in Guelph save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (67 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 704.

6467-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. Speed Drywall Limited (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit). (FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

6468-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. Town Drywall Ltd. (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

6469-74-R: The International Brotherhood of Electrical Workers Local 804 (Applicant) v. Forest City Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6470-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taro Properties Incorporated (Respondent) v. Labourers International Union of North America, Local 607 (Intervener).

Unit: "all construction labourers in the employ of the respondent in the district of Thunder Bay save and except non-working foremen, and persons above the rank of non-working foreman." (3 employees in the unit).

6472-74-R: Printing Specialties and Paper Products Union Local 466 (Applicant) v. Monarch Marking System, Limited (Respondent).

Unit: "all employees of the respondent in the Town of Markham, save and except foremen, persons above the rank of foreman, office staff, sales staff, and students employed during the school vacation period." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6473-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Gananoque Ambulance Service (Respondent).

Unit: "all employees of the respondent employed as ambulance driver-attendants in Gananoque, save and except supervisors and persons above the rank of supervisor, and office and clerical employees " (4 employees in the unit).

6475-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Board of Management of the District of Manitoulin Home for the Aged (Respondent).

Unit: "all employees who are regularly employed for not more than twenty-four hours per week of the District of Manitoulin Home for the Aged at Little Current save and except supervisors, persons above the rank of supervisor, professional medical staff, graduate nursing staff, undergraduate nurses and office and clerical staff." (22 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6479-74-R: Labourers' International Union of North America, Local 493 (Applicant) v. Armagh Contractors (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Townships of Caldwell, Springer, Field, Badgerow, Hugel, Kirkpatrick and MacPherson in the District of Nipissing (excepting therefrom those portions of the Townships of Hugel, Kirkpatrick and MacPherson which are included within a thirty-five mile radius of the City of Sudbury Federal Building), save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6480-74-R: Labourers' International Union of North America, Local 493 (Applicant) v. Corfab Masonary Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working." (3 employees in the unit).

6481-74-R: Canadian Steelworkers' Union (Applicant) v. Lely Limited (Respondent).

Unit: "all employees of the respondent employed at the Lely plant on North Service Road in Burlington, save and except office staff, foremen and persons above the rank of foreman." (37 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6482-74-R: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Carling

O'Keefe Limited; Carling O'Keefe Transport Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all salaried office, clerical, kitchen employees, nurses and nursing assistants employed by the respondent at its plant at 1 Carlingview Drive, Rexdale, Ontario, save and except salesmen, hosts, hostesses, foremen, supervisors, persons above the rank of foreman or supervisor, confidential secretary to the general sales manager, secretary to the manager operations, secretary to the manager transport and distribution, secretary to the Personnel Supervisor, sales administrator, distribution co-ordinator, buyer, plant stewardess, students employed during the school vacation period, persons covered by subsisting collective agreements and persons covered by a Board Certificate dated the 10th day of April, 1974." (37 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6484-74-R: Labourers International Union of North America Local 837 (Applicant) v. Industrial Shop Boxes Limited (Respondent).

Unit: "all employees of the respondent at Hamilton, save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6485-74-R: Service Employees Union Local 268 (Applicant) v. The McCausland Hospital (Respondent).

Unit: "all office and clerical personnel employed at The McCausland Hospital, in its Hospital, at Terrace Bay, save and except supervisors, persons above the rank of supervisor, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6487-74-R: Service Employees Union Local 268 (Applicant) v. The McCausland Hospital (Respondent).

Unit: "all employees of The McCausland Hospital at Terrace Bay, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office and clerical staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (14 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6512-74-R: United Steelworkers of America (Applicant) v. Canadian Hilti Limited (Respondent).

Unit: "all employees of the respondent working in or out of Hamilton, save and except foremen, persons above the rank of foreman, office and sales staff." (4 employees in the unit).

6515-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Vincent Court Apartments Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6516-74-R: Canadian Union of Public Employees (Applicant) v. C. H. S. Pharmacy Limited (Respondent).

Unit: "all employees of the respondent at Oshawa who are regularly employed for not more than 24 hours per week, save and except graduate pharmacists, administrator, confidential secretary to the administrator, department heads, persons above the rank of department head, persons covered by a certificate dated May 22, 1974 and students employed during the school vacation period." (6 employees in the unit).

6519-74-R: Service Employees' Union, Local 210, Affiliated with Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Leamington District Memorial Hospital (Respondent).

Unit #1: "all employees of the respondent at Leamington, employed in its medical laboratory, radiology department and pharmacy department as graduate registered technologists, graduate registered technicians, graduate non-registered technologists, graduate non-registered technicians, pharmacy technicians, laboratory aides, save and except charge technologists, graduate pharmacists, persons above the rank of charge technologist and graduate pharmacist, office and clerical staff, students engaged in a co-operative program between the respondent and a university or college, students employed during the school vacation period, persons regularly employed for not more than twenty-four hours per week and those persons covered by subsisting collective agreements." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of the respondent at Leamington, regularly employed for not more than twenty-four hours per week in its medical laboratory, radiology department and pharmacy department as graduate registered technologists,

graduate registered technicians, graduate non-registered technologists, graduate non-registered technicians, pharmacy technicians, laboratory aides and students employed during the school vacation period, save and except charge technologists, graduate pharmacists, persons above the rank of charge technologist and graduate pharmacist, office and clerical staff, students engaged in a co-operative program between the respondent and a university or college, and those persons covered by subsisting collective agreements." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6527-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Concord (Ottawa) Electrical Contractors Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6538-74-R: Better Read Workers Union (Applicant) v. Ontario Alternate Distribution Inc. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto save and except foremen and persons above the rank of foreman." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6541-74-R: Christian Labour Association of Canada (Applicant) v. Simcoe Mechanical Contracting Limited (Respondent) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Intervener).

Unit: "all plumbers, plumbers' apprentice, steamfitters and steamfitters' apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Townships of Hope, Manvers and Cavan), save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6543-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U. - A.F. of L., C.I.O., C.L.C. (Applicant) v. Corporation of the City of Sarnia, Marshall Gowland Manor (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, registered nurses and office staff." (22 employees in the unit).

6549-74-R: Labourers International Union of North America Local 837 (Applicant) v. Bellissario & Mila Carpenters (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6550-74-R: Labourers International Union of North America Local 837 (Applicant) v. Mazza Masonry Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6552-74-R: Service Employees Union Local 268 (Applicant) v. Van Daele Manor Sault Ste. Marie Nursing Home Ltd. (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie, Ontario, save and except supervisors and foremen, persons above the rank of supervisor and foreman professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (32 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6553-74-R: Service Employees Union Local 268 (Applicant) v. Van Daele Manor Sault Ste. Marie Nursing Home Ltd. (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie, Ontario, regularly employed for not more than twenty-four hours per week save and except supervisors and foremen, persons above the rank of supervisor and foreman, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, office staff and students employed during the school vacation period." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6555-74-R: United Steelworkers of America (Applicant) v. Elgin Motors Company Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto employed as truck drivers, save and except foremen, persons above the rank of foreman, office and sales staff and persons covered by subsisting collective agreements." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6561-74-R: Canadian Paperworkers Union (Applicant) v. Bonar and Bemis Ltd. (Respondent).

Unit: "all employees of the respondent at Guelph, save and except foremen, persons above the rank of foreman, office and sales staff." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6566-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Ralena Construction Co. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

6567-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Antamex Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6570-74-R: Local Union 2345 International Brotherhood of Electrical Workers, A.F.L. C.I.O. C.L.C. (Applicant) v. Elmira Public Utilities Commission (Respondent).

Unit: "all employees of the respondent, save and except foremen, persons above the rank of foreman, office staff and students employed during the school vacation period." (4 employees in the unit).

6577-74-R: Warehousemen and Miscellaneous Drivers Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Coville Cartage and H. Sopha Cartage (Respondents).

Unit: "all employees of the named respondents at and out of Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6582-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Stephen Sura Inc. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the

respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6583-74-R: Canadian Union of Public Employees (Applicant) v. The East Parry Sound Board of Education (Respondent) v. The Ontario Public School Men Teachers Federation with Federation of Women Teachers Association of Ontario (Intervener).

Unit: "all office, clerical and technical employees of the Respondent, in the East Parry Sound Board of Education District, save and except Business Administrator, Transportation Officer, Secretary to the Director and Accountant Office Manager." (29 employees in the unit).

6584-74-R: Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Applicant) v. Montcalm Const. Inc. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6593-74-R: Labourers International Union of North America Local 837 (Applicant) v Begg & Daigle (1972) Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6594-74-R: Canadian Food and Allied Workers Local Union 175 Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Beauchesne Bros. Ltd. (Respondent).

Unit: "all employees of the respondent at its retail stores in Kapuskasing, regularly employed for not more than twenty-four hours per week and students employed in off-school hours and during the school vacation period." (14 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6595-74-R: Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Beauchesne Bros. Ltd. (Respondent).

Unit: "all employees of the respondent at its retail stores in Kapuskasing, save and except meat department employees, store manager, persons above the

rank of store manager and persons regularly employed for not more than twenty-four hours per week and students employed in off-school hours and during the school vacation period." (25 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6596-74-R: Canadian Food and Allied Workers Local Union 633, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Beauchesne Bros. Ltd. (Respondent).

Unit: "all meat department employees of the respondent at its retail stores in Kapuskasing, save and except persons employed for not more than twenty-four hours per week and students employed in off-school hours and during the school vacation period." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6597-74-R: Service Employees Union Local 268 (Applicant) v. The Port Arthur Clinic (Respondent).

- and -

6598-74-R: Service Employees Union Local 268 (Applicant) v. The Port Arthur Clinic (Respondent).

- and -

6599-74-R: Service Employees Union Local 268 (Applicant) v. The Port Arthur Clinic (Respondent).

- and -

6600-74-R: Service Employees Union Local 268 (Applicant) v. The Port Arthur Clinic (Respondent).

Unit #1: "all employees of The Port Arthur Clinic, Thunder Bay, Ontario, save and except supervisors, persons above the rank of supervisor, credit manager, graduate pharmacists, optometrists, professional medical staff, graduate nursing staff, undergraduate nurses, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (62 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of The Port Arthur Clinic, Thunder Bay, Ontario, being persons regularly employed for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, credit manager, graduate pharmacists, optometrists, professional medical staff, graduate nursing staff, undergraduate nurses and students employed during the school vacation period." (12 employees in the unit). (SIMILARLY, AND AGAIN WITH REFERENCE TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THAT THE RESPONDENT IS A PRIVATE MEDICAL CLINIC. IT IS NOT A HOSPITAL IN THAT IT DOES NOT HAVE BEDS AND ONLY TWO REGISTERED NURSES ARE EMPLOYED, AND IT IS NOT A HEALTH UNIT IN THE SENCE OF BEING ORGANIZED UNDER THE PUBLIC HEALTH. THUS AN ALL EMPLOYEE UNIT EMBRACING SERVICE, PARAMEDICAL, AND OFFICE AND TECHNICAL EMPLOYEES IS IN NO WAY CONTRARY TO ANY EXISTING BOARD POLICY.).

6607-74-R: Labourers International Union of North America Local 837 (Applicant) v. Alnor Earthmoving Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

6615-74-R: International Brotherhood of Electrical Workers, Local Union 2028, AFL-CIO-CLC (Applicant) v. Public Utilities Commission of The Town of Campbellford (Respondent).

Unit: "all employees of the Public Utilities Commission of The Town of Campbellford, save and except foremen, persons above the rank of foreman, office, clerical and technical staff, and persons regularly employed for not more than 24 hours per week." (9 employees in the unit).

6627-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. D & D Holdings (London) Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

6649-74-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union No. 124, Ottawa (Applicant) v. E. G. M. Cape & Company Ltd. (Respondent).

Unit: "all cement masons and cement masons' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6650-74-R: Labourers International Union of North America Local 837 (Applicant) v. Edland Building System Ontario Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

5815-74-R: The Workers Union of Queen Elizabeth Hospital (CNTU) (Applicant) v. VS Services Ltd. (Food Management Services), at Queen Elizabeth

Hospital, Toronto (Respondent) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener #1) v. Canadian Union of General Employees (Intervener #2).

Unit: "all employees of Versafood Services Limited (Food Management Services) Queen Elizabeth Hospital, Toronto at the Queen Elizabeth Hospital in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, dieticians, student dieticians, chef and office staff." (86 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		85
Number of persons who cast ballots	70	
Number of ballots marked in favour of applicant	52	
Number of ballots marked in favour of intervener	18	

5897-74-R: Canadian Union of Public Employees (Applicant) v. The Toronto Western Hospital (Respondent) v. Canadian Union of General Employees (Intervener).

Unit: "all employees of the respondent, save and except professional staff, medical staff, graduate nursing staff, graduate pharmacists, graduate dietitians, technical personnel, students on a course leading to employment in one of the aforementioned exempt categories, supervisors, persons above the rank of supervisor, chief engineers, clerical staff, persons regularly employed for not more than twenty-four (24) hours per week, students employed during the school vacation period, and persons covered by a subsisting collective agreement between the Hospital and the Canadian Union of Operating Engineers, Local 101." (600 employees in the unit).

Number of names of persons on revised voters' list		583
Number of persons who cast ballots	428	
Ballots segregated and not counted	36	
Number of spoiled ballots	5	
Number of ballots marked in favour of applicant	398	
Number of ballots marked in favour of intervener	25	

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6219-74-R: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. H.J. Heinz Company of Canada Ltd. (Respondent).

Unit: "all office, clerical and technical employees of the respondent at Leamington, save and except Assistant Department Heads, those above the rank of Assistant Department Head, supervisor, R & D Workshop, secretaries to each of the General Manager Leamington Factory Operations, Manager Leamington Financial Operations and the Manager of Quality Control, persons employed in the personnel department, the medical department, the salary payroll department and the agricultural department, the senior labour analyst, food chemist, recipe procedures technologist, research nutritionist, programmers and systems analysts, persons employed in the factory, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (133 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list	121
Number of persons who cast ballots	128
Ballots segregated and not counted	12
Number of ballots marked in favour of applicant	74
Number of ballots marked against applicant	42

6377-74-R: Canadian Food and Allied Workers Local Union 725, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent).

Unit: "all employees of the respondent at its retail stores in the City of London, save and except group managers, persons above the rank of group manager, personnel representative, security staff and management trainees." (102 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list	93
Number of persons who cast ballots	81
Ballots segregated and not counted	2
Number of ballots marked in favour of applicant	47
Number of ballots marked against applicant	32

Applications Certified Subsequent to Post-Hearing Vote

5478-74-R: Canadian Union of Public Employees (Applicant) v. Ottawa General Hospital (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).

Unit: "all employees of the respondent at Ottawa regularly employed

during the school vacation period, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dieticians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff and persons covered by subsisting collective agreements." (96 employees in the unit).

Number of names of persons on revised voters' list		77
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	0	

5891-74-R: The Canadian Transportation Workers Union #200, National Council of Canadian Labour (Applicant) v. Dry Bulk Forwarders Ltd. (Respondent) v. Teamsters Local 879 and Teamsters Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener).

Unit: "all employees of the respondent, working in or out of the Township of Markham, save and except office staff, foremen, persons above the rank of foreman and persons regularly employed for not more than twenty-four hours per week." (5 employees in the unit).

Number of names of persons on revised voters' list		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	0	

5896-74-R: Amalgamated Clothing Workers of America (Applicant) v. T. Lipson & Sons Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto save and except foremen, foreladies, persons above the rank of foreman, and forelady, supervisors, sales and office staff, persons who regularly work less than twenty-four hours per week and students employed during the school vacation period." (94 employees in the unit).

Number of names of persons on revised voters' list		92
Number of persons who cast ballots	83	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	48	
Number of applicant marked against applicant	34	

6021-74-R: Brewery, Soft Drink, Distillery, Distributors and Miscellaneous Workers Local 1000 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Dominion Stores Limited (Respondent) v. International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. & General Workers Local 800, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America - CLC (Intervener).

Unit: "all employees of the respondent at its retail stores in Chatham and Wallaceburg, Ontario, save and except store managers, persons above the rank of store manager assistant store manager, bakery managers and office staff." (90 employees in the unit).

Number of names of persons on revised voters' list		86
Number of persons who cast ballots	58	
Number of ballots marked in favour of applicant	55	
Number of ballots marked in favour of intervener	3	

6239-74-R: Hotel and Restaurant Employees and Bartenders International Union, Restaurant, Cafeteria and Tavern Employees Union Local 254 (Applicant) v. Crawley & McCracken Co. Ltd. (Respondent).

Unit: "all employees of the respondent employed at Mattabi Mines, Ignace, Ontario, save and except manager, executive chef, persons above the rank of manager and executive chef and office staff." (18 employees in the unit).

Number of names of persons on revised voters' list		21
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	5	

6260-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers, Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Standard Industries Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in its Standard Paving Company Division working at or out of North Bay, save and except foremen, dispatchers, persons above the rank of foreman or dispatcher, office and sales staff and students employed during the school vacation period." (36 employees in the unit).

Number of names of persons on voters' list		34
Number of persons who cast ballots	33	
Number of ballots marked in favour of applicant	23	
Number of ballots marked against applicant	10	

6266-74-R: Ontario Nurses' Association (Applicant) v. The Shaver Hospital For Chest Diseases (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in St. Catharines, in a nursing capacity, save and except Supervisors and persons above the rank of supervisor." (35 employees in the unit).

Number of names of persons on voters' list		37
Number of persons who cast ballots	30	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	13	

6273-74-R: United Steelworkers of America (Applicant) v. Falconbridge Copper Limited, Operator Sturgeon Lake Joint Venture (Respondent) v. Sudbury Mines, Mill and Smelter Workers Union, Local 598 (Intervener).

Unit: "all employees of the respondent at its operations situated approximately fifty-five miles north of Ignace, save and except foremen and shift bosses, persons above the rank of foreman and shift boss, office and clerical staff, employees in the engineering geology and metallurgy departments." (16 employees in the unit).

Number of names of persons on voters' list		77
Number of persons who cast ballots	58	
Number of ballots marked in favour of applicant	25	
Number of ballots marked in favour of Intervener	32	
Number of ballots marked in favour of no trade Union	1	

6363-74-R: Printing Specialties and Paper Products Union Local 466 (Applicant) v. Monarch Marking System Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office staff, sales staff, field service technicians and students employed during the school vacation period." (86 employees in the unit). (THE BOARD NOTED FOR PURPOSES OF CLARITY THAT PERSONS CLASSIFIED BY THE RESPONDENT AS FIELD SERVICE REPRESENTATIVES EMPLOYED OUT OF THE TOWN OF MARKHAM ARE NOT INCLUDED IN THE APPROPRIATE BARGAINING UNIT.).

Number of names of persons on voters' list		83
Number of persons who cast ballots	80	
Ballots segregated and not counted	5	
Number of ballots marked in favour of applicant	44	
Number of ballots marked against applicant	31	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

No Vote Conducted

3700-73-R: Office & Professional Employees International Union (Applicant) v. Meretsky and Muroff (Respondent). (6 employees).

4336-73-R: Retail Clerks International Association (Applicant) v. G. Tamblyn Limited (Respondent). (32 employees).

4568-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Glen Lawrence Construction Company Limited (Respondent) v. Group of Employees (Objectors). (22 employees).

4795-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Keldor Forming Limited, carrying on business as Slater Forming (Respondent). (80 employees).

4829-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Delton Realty (Respondent). (3 employees).

4831-74-R: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Tri-Del Construction Company (Respondent). (3 employees).

4994-74-R: Retail Clerks International Association (Applicant) v. Zehr's Markets Limited (Respondent). (1 employee).

5303-74-R: Canadian Union of Public Employees (Applicant) v. The Regional Municipality of Halton (Respondent) v. Ontario Nurses' Association (Inter-

vener #1) v. International Brotherhood of Electrical Workers, Local Union 636, AFL. CIO. CLC (Intervener #2) v. International Brotherhood of Electrical Workers, Local Union 1766, AFL. CIO. CLC. (Intervener #3). (44 employees).

6086-74-R: Canadian Union of Public Employees (Applicant) v. Red Lake Board of Education (Respondent) v. Group of Employees (Objectors). (18 employees).

6284-74-R: Tridon Employee's Association (Applicant) v. Tridon Limited (Respondent) v. United Electrical, Radio and Machine Workers of America (UE) (Intervener). (246 employees).

6335-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Standard Machine & Equipment Incorporated (Respondent) v. United Cement, Lime and Gypsum Workers International Union (Intervener). (6 employees).

6414-74-R: Canadian Union of Public Employees (Applicant) v. The Lake of the Woods District Hospital (Respondent). (95 employees).

6417-74-R: Northern Electric London Professional Association (Applicant) v. Northern Electric Company Limited (Respondent) v. U.A.W. Local 1525 (Intervener). (34 employees).

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6421-74-R: Labourers International Union of North America, Local 607 (Applicant) v. G.C. Rental & Enterprises Limited (Respondent) v. Employee (Objectors). (no employees).

6426-74-R: Federation of Children's Aid Staffs (Applicant) v. Loyal True Blue and Orange Home (Respondent). (4 employees).

6427-74-R: International Beverage Dispensers' and Bartenders' Union, Local 280 of the Hotel and Restaurant Employees' and Bartenders' International Union. A.F.L.-C.I.O.-C.L.C. (Applicant) v. Brass Rail Tavern (Toronto) Ltd. (Respondent) v. Group of Employees (Objectors). (32 employees).

6486-74-R: Service Employees Union Local 268 (Applicant) v. The McCausland Hospital (Respondent). (8 employees).

6578-74-R: Warehousemen and Miscellaneous Drivers Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. H. Sopha Cartage (Respondent). (3 employees).

6611-74-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Emco Limited (Respondent). (82 employees).

6648-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. E. J. Wright Central Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

Certification Dismissed Subsequent to Pre-Hearing Vote

4065-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Smiths Construction Company Arnprior Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the County of Renfrew, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (70 employees in the unit).

Number of names of persons on revised voters' list		105
Number of persons who cast ballots	105	
Ballots segregated and not counted	4	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	93	

4152-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Smiths Construction Company Arnprior Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (65 employees in the unit).

Number of names of persons on voters' list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	0	
Number of ballot marked against applicant	5	

6060-74-R: Canadian Union of Public Employees (Applicant) v. University of Western Ontario (Respondent).

Voting Constituency: "All employees of the respondent at its London campuses engaged in caretaking of buildings and grounds, save and except foremen, persons above the rank of foreman, persons regularly employed for not more than twenty-four hours per week, office staff, students enrolled in the University, students employed during the school vacation period and security guards." (387 employees). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT THE TERM "OFFICE STAFF" INCLUDES HALL CLERKS AND POSTAL OFFICE STAFF.). (THE BOARD FURTHER DIRECTS THAT ALL EMPLOYEES ENGAGED IN THE "MAINTENANCE AND SERVICE OF BUILDINGS AND GROUNDS" BE PERMITTED TO VOTE AND THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.). (FOR PURPOSES OF CLARITY, THE BOARD NOTES THAT THOSE EMPLOYEES ENGAGED IN THE "MAINTENANCE AND SERVICE OF BUILDINGS AND GROUNDS" INCLUDE THE FOLLOWING CLASSIFICATIONS: CARPENTER, CARPENTER SERVICE MECHANIC, VEHICLE MECHANIC, SERVICEMAN-CARPENTER, ELECTRICIAN, ELECTRICAL SERVICE MECHANIC, PAINTER, PLUMBER, SERVICE MECHANIC PLUMBER, PLUMBER-FITTER, STORESMAN, STATIONARY ENGINEER, DRIVER, SERVICEMAN-MOTORS, MOTOR MECHANIC, CONTROL MECHANIC, LABOURER, STEAMFITTER, SERVICEMAN REFRIGERATION, REFRIGERATION MECHANIC, REFRIGERATION APPRENTICE, ELEVATOR MECHANIC, SHEET METAL MECHANIC, LOCKSMITH, LOCKSMITH SERVICE MECHANIC AND MASON.). (THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST BY THE PERSONS ENCOMPASSED IN THE SAID VOTING CONSTITUENCY IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		384
Number of persons who cast ballots	349	
Number of ballots excluding segregated ballots cast by persons whose names appear on voters' list	255	
Number of segregated ballots cast by persons whose names appear on voters' list	94	

BALLOT BOX SEALED

6293-74-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant)
v. Hartford Fibres Limited (Respondent).

Voting Constituency: "All employees of the respondent at Kingston save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than twenty-four (24) hours per week, and students employed during the school vacation periods." (53 employees).

Number of names of persons on revised voters' list		52
Number of persons who cast ballots	50	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	23	
Number of ballots marked against the applicant	26	

6361-74-R: The International Woodworkers of America (Applicant) v. Dry Kiln Services Ltd. (Respondent).

Voting Constituency: "All employees of the respondent at Pembroke, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, scalers, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (11 employees). (...THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.).

Number of names of persons on revised voters' list		8
Number of persons who cast ballots	8	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	6	

6388-74-R: The Civil Service Association of Ontario (Inc.) (Applicant)
v. Peel Memorial Hospital (Respondent).

Voting Constituency: "All medical Laboratory, Radiology, Respiratory, E.C.G., Technologists, Technicians and Assistants employed by the respondent in Brampton, Ontario, save and except supervisors, persons above the rank of supervisor, office and clerical staff, students in training, students employed during the school vacation periods, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (42 employees). (...THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN

THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.).

Number of names of persons on voters' list		39
Number of persons who cast ballots	39	
Ballots segregated and not counted	6	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	24	

6453-74-R: Christian Labour Association of Canada (Applicant) v. Maedel's Beverages Limited (Respondent) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local 880, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener).

Voting Constituency: "All employees of the respondent working at or out of Essex and Chatham, Ontario, save and except foremen, route managers, persons above the rank of foreman or route manager, office staff and students employed during the school vacation period." (43 employees in the unit).

Number of names of persons on revised voters' list		40
Number of persons who cast ballots	37	
Number of ballots marked in favour of applicant	8	
Number of ballots marked in favour of intervener	29	

6514-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Merrymount Childrens' Home (Respondent).

Voting Constituency: "All employees of the respondent at London, Ontario, save and except supervisors, persons above the rank of supervisor, office staff, and persons regularly employed for not more than twenty-four hours per week." (22 employees).

Number of names of persons on revised voters' list		19
Number of persons who cast ballots	18	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	9	

Certification Dismissed Subsequent to Post-Hearing Vote

5802-74-R: Association of Commercial and Technical Employees, Local 1704, C.L.C. (Applicant) v. National Communications and Data Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except senior formatters, persons above the rank of senior formatter, and secretary to the general manager." (24 employees in the unit).

Number of names of persons on revised voters' list		22
Number of persons who cast ballots	21	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	10	
Number of ballots marked against applicant	9	

6044-74-R: United Steelworkers of America (Applicant) v. Compair Canada Limited (Respondent).

Unit: "all employees of the respondent in Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (62 employees in the unit).

Number of names of persons on revised voters' list		55
Number of persons who cast ballots	50	
Number of ballots marked in favour of applicant	22	
Number of ballots marked against applicant	28	

6231-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Riverdale Hospital (Respondent).

Unit: "all medical laboratory technologists, technicians and assistants employed by the respondent in Metropolitan Toronto, save and except chief technologists, persons above the rank of chief technologist, students in training, students employed during the school vacation period, employees covered by subsisting labour agreements and persons regularly employed for not more than 24 hours per week." (6 employees in the unit).

Number of names of persons on revised voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	4	

6255-74-R: Canadian Union of Public Employees (Applicant) v. MacDonald Memorial Hospital (Respondent).

Unit: "all registered and graduate nurses of the respondent in its hospital operation in Cornwall, save and except supervisors, those above the rank of supervisor, and persons regularly employed for not more than 24 hours per week." (42 employees in the unit).

Number of names of persons on revised voters' list		24
Number of persons who cast ballots	24	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	23	

6256-74-R: Canadian Union of Employees (Applicant) v. MacDonell Memorial Hospital (Respondent).

Unit: "all employees of the respondent, save and except professional medical staff, graduate nursing staff, undergraduate nursing staff, graduate pharmacists, undergraduate pharmacists, graduate dieticians, student dieticians, technical personnel, supervisors, foremen, persons above the rank of supervisor and foreman, office and clerical staff and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (108 employees in the unit).

Number of names of persons on revised voters' list		90
Number of persons who cast ballots	89	
Number of ballots marked in favour of applicant	43	
Number of ballots marked against applicant	46	

6323-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Abbey Hotel Limited (Respondent).

Unit: "all employees of the respondent at London, Ontario, save and except managers, persons above the rank of manager." (23 employees in the unit).

Number of names of persons on revised voters' list		25
Number of persons who cast ballots	22	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	17	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

6375-74-R: Labourers International Union of North America, Local Union #493 (Applicant) v. O'Brien Contracting Services Ltd. (Respondent). (5 employees).

6396-74-R: York University Co-Operative Daycare Centre Employee's Association (Applicant) v. York University Co-Operative Daycare Centre (Respondent). (13 employees).

6471-74-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local No. 124, Ottawa - Hull (Applicant) v. Arrow Acoustics Flooring Limited (Respondent) v. The Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America (Intervener #1) v. International Brotherhood of Painters and Allied Trades, Local Union 1891 (Intervener #2). (2 employees).

6496-74-R: International Association of Bridge, Structural and Ornamental Iron Workers Local Union 721 (Applicant) v. Chief Erectors (Respondent). (10 employees).

6520-74-R: United Steelworkers of America (Applicant) v. Canada Carbon and Ribbon Company Limited (Respondent). (85 employees).

6554-74-R: Canadian Home of Public Employees (Applicant) v. St. Joseph's Hospital, Hamilton (Respondent). (12 employees).

6579-74-R: Carpenters' District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Applicant) v. P. L. S. Construction Ltd. (Respondent). (3 employees).

6608-74-R: American Federation of Television and Radio Artists, Detroit Local (Applicant) v. Radio Station CKWW-AM (Respondent). (17 employees).

6610-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sub-Strata Construction Ltd. (Respondent). (7 employees).

6628-74-R: Labourers' International Union of North America, Local 1081 (Applicant) v. Funcraft Vehicles Ltd. (Respondent). (40 employees).

6631-74-R: United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. ENKA Contracting Ltd. (Respondent). (6 employees).

6717-74-R: United Garment Workers of America Local 493 (Applicant) v. H. D. Lee Company of Canada Ltd. (Respondent). (30 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING OCTOBER

6205-74-R: Wayne Dillon (Applicant) v. Warehousemen and Miscellaneous Drivers Union, Local 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Canmart Shoe Limited (Intervener). (GRANTED).

Unit: "all employees of the employer in its distribution centres in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, salesmen and office staff." (21 employees in the unit).

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	21
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	15

6390-74-R: Burford Sheet Metal Products Ltd. (Applicant) v. Sheet Metal Workers' International Association, Local 540 (Respondent). (2 employees). (DISMISSED).

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6564-74-R: Helen Glaser (Applicant) v. Retail, Wholesale and Department Store Union, Local #1002, A.F.L. C.I.O. C.L.C. (Respondent). (16 employees). (TERMINATED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING
OCTOBER

6367-74-R: Ontario Nurses' Association (Applicant) v. The Corporation of the Leeds, Grenville and Lanark District Health Unit (Respondent). (GRANTED).

6498-74-R: Ontario Nurses' Association (Applicant) v. The Corporation of the City of Windsor (Respondent). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

OCTOBER

6494-74-U: Mobil Paint Company (Applicant) v. Those persons named in Schedule "A" of this application (Respondents). (GRANTED).

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6504-74-U: Continental Can Company of Canada Limited (Applicant) v. L. G. Whitley, et al (Respondents). (WITHDRAWN).

6505-74-U: Continental Can Company of Canada Limited (Applicant) v. Roger Paquette, et al (Respondents). (WITHDRAWN).

6506-74-U: Continental Can Company of Canada Limited (Applicant) v. James Campbell, et al (Respondents). (WITHDRAWN).

6557-74-U: MCA Canada Limited (Applicant) v. Ronald Smith, Alex Gilmore, Darrel Horton, Denise Martineau, Jeanne Snider, Larry Labelle, Douglas Beckstead and all other members of IUE - International Union Electrical, Radio, and Machine Workers, AFL-CIO-CLC, Local 539 (Respondents). (WITHDRAWN).

6558-74-U: MCA Canada Limited (Applicant) v. Ronald Smith, Alex Gilmore, Darrel Horton, Denise Martineau, Jeanne Snider, Larry Labelle and Douglas Beckstead (Respondents). (WITHDRAWN).

6629-74-U: Ingersoll Cheese Co., Division of Nestle (Canada) Ltd. (Applicant) v. June E. Allen, et al., (See Schedule A attached hereto) (Respondents). (TERMINATED).

6711-74-U: National Grocers Company Limited (Applicant) v. Graham Glover, et al. (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

6074-74-U: Quebec Hardwoods Incorporated, (Formerly Canadian Hardwoods Limited) (Applicant) v. Claude Asselin, et al (Certain employees of the Applicant) (Respondents). (WITHDRAWN).

6075-74-U: Quebec Hardwoods Incorporated (Formerly Canadian Hardwoods Limited) (Applicant) v. Christian Robidas and United Brotherhood of Carpenters and Joiners of America, Local Union 2759 (Respondents). (WITHDRAWN)

6297-74-U: The Hotels, Clubs, Restaurants, Taverns Employees' Union, Local 261, Ottawa, Ontario, chartered by the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L. - C.I.O. (Applicant) v. Winco Steak N' Burger Restaurants Limited, Tony Guilbert (Respondents). (DISMISSED).

6341-74-U: International Molders & Allied Workers Union (Applicant) v. Hobart Brothers of Canada Ltd. (Respondent). (WITHDRAWN).

6433-74-U: Junior Footwear Limited (Applicant) v. Boot and Shoe Workers' Union; CLC, AFL-CIO, and I. Reilly (Respondents). (WITHDRAWN).

6465-74-U: South Centennial Manor (Applicant) v. Jack Nicholls and Service Employees Union, Local 478 (Respondents). (WITHDRAWN).

6466-74-U: South Centennial Manor (Applicant) v. Jack Nicholls and Service Employees Union, Local 478 (Respondents). (WITHDRAWN).

6491-74-U: Glendale Corporation (Applicant) v. Thomas Donald (Respondent). (WITHDRAWN).

6492-74-U: Glendale Corporation (Applicant) v. Douglas Boyce (Respondent). (WITHDRAWN).

6493-74-U: Glendale Corporation (Applicant) v. Raymond Hathaway (Respondent). (WITHDRAWN).

6565-74-U: Federation of Children's Aid Staffs (Applicant) v. Loyal True Blue and Orange Home (Respondent). (WITHDRAWN).

6603-74-U: International Molders & Allied Workers Union (Applicant) v. Hobart Brothers of Canada Limited (Respondent). (WITHDRAWN).

6605-74-U: International Brotherhood of Pottery and Allied Workers (Applicant) v. Cornwall Brass & Iron Foundries Ltd. and John Larue (Respondents). (WITHDRAWN).

6621-74-U: International Brotherhood of Pottery and Allied Workers (Applicant) v. Cornwall Brass & Iron Foundries Ltd. (Respondent). (WITHDRAWN).

6622-74-U: International Brotherhood of Pottery and Allied Workers (Applicant) v. Cornwall Brass & Iron Foundries Ltd. (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURINGOCTOBER

2661-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2663-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2664-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2665-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2666-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2667-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2668-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2669-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2670-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2671-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

2673-72-U: Canadian Union of General Employees (Complainant) v. The Toronto Western Hospital (Respondent). (TERMINATED).

6039-74-U: Daniel Foisy (Complainant) v. Richard Proctor (Respondent). (DISMISSED).

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6152-74-U: Service Employees Union, Local 478, affiliated with AFL-CIO-CLC (Complainant) v. South Centennial Manor (Respondent). (WITHDRAWN).

6267-74-U: Lewis P. Stevens (Complainant) v. Officer of Heat Transfer Workers Union and Brown Fintube Engineering Ltd. Mr. S. Lare (Respondents). (DISMISSED).

6409-74-U: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Complainant) v. Abbey Hotel Limited (Respondent). (WITHDRAWN).

6431-74-U: Service Employees Union, Local 478 affiliated with AFL-CIO-CLC (Complainant) v. South Centennial Manor (Respondent). (WITHDRAWN).

6454-74-U: Mrs. Evelyn M. Torrance (Complainant) v. The Corporation of the City of Brampton, Ontario (Respondent). (WITHDRAWN).

6458-74-U: Pieter Nijenhuis (Complainant) v. Eramosa Brass and Aluminum Ltd. (Respondent). (WITHDRAWN).

6521-74-U: Sheet Metal Workers' International Association Local Union #285 (Complainant) v. Rexdale Heating Ltd. (Respondent). (WITHDRAWN).

6576-74-U: Federation of Children's Aid Staffs (Complainant) v. Loyal True Blue and Orange Home (Respondent). (WITHDRAWN).

6606-74-U: International Brotherhood of Pottery and Allied Workers and Armand Tessier (Complainants) v. Cornwall Brass & Iron Foundries Ltd., and Arthur Lapensee (Respondents). (WITHDRAWN).

6665-74-U: H. C. Maass (Shop Steward) (Complainant) v. Canadian Rogers (Eastern) Limited - or - Sheet Metal Workers' International Assoc. Local #30 (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 39 DISPOSED OF DURING OCTOBER

6317-74-M: Pieter Nijenhuis (Applicant) v. United Steelworkers of America, Local 3997 (Respondent Trade Union) v. Eramosa Brass & Aluminum Ltd. (Respondent Employer). (GRANTED).

6318-74-M: Keith Lodder (Applicant) v. United Steelworkers of America, Local 3997 (Respondent Trade Union) v. Eramosa Brass & Aluminum Ltd. (Respondent Employer). (GRANTED).

6319-74-M: Dick L. Lodder (Applicant) v. United Steelworkers of America, Local 3997 (Respondent Trade Union) v. Eramosa Brass & Aluminum Ltd. (Respondent Employer). (GRANTED).

6320-74-M: Harry Van Raalte (Applicant) v. United Steelworkers of America Local 3997 (Respondent Trade Union) v. Eramosa Brass & Aluminum Ltd. (Respondent Employer). (GRANTED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

6411-74-M: St. Peter's Hospital Employees' Local Union No. 778, C.U.P.E. (Trade Union) v. St. Peter's Hospital, Hamilton (Employer). (GRANTED).

6432-74-M: Canadian Union of Public Employees, Local 942 (Trade Union) v. Royal Ottawa Hospital (Employer). (GRANTED).

6434-74-M: Service Employees Union Local 210 (Trade Union) v. Alexandra Marine and General Hospital (Employer). (GRANTED).

6437-74-M: Civil Service Association of Ontario (Trade Union) v. Sudbury General Hospital (Employer). (GRANTED).

6438-74-M: CSAO National (Inc.) (Trade Union) v. St. Joseph Hospital of Sudbury (Employer). (GRANTED).

6439-74-M: CSAO National (Inc.) (Trade Union) v. Sudbury Memorial Hospital (Employer). (GRANTED).

6440-74-M: Ontario Nurses Association (Trade Union) v. Sudbury General Hospital of the Immaculate Heart of Mary (Employer). (GRANTED).

6441-74-M: Ontario Nurses Association (Trade Union) v. St. Joseph Hospital (Employer). (GRANTED).

6442-74-M: Ontario Nurses Association (Trade Union) v. Sudbury General Hospital of the Immaculate Heart of Mary (Employer). (GRANTED).

6443-74-M: Ontario Nurses Association (Trade Union) v. The Board of Directors of the Sudbury and Algoma Sanatorium Association (Employer). (GRANTED).

6450-74-M: The Civil Service Association of Ontario (Inc.) (Trade Union) v. Norfolk General Hospital Simcoe, Ontario (Employer). (GRANTED).

6457-74-M: Service Employees Union, Local 478 A.F.L., C.I.O., C.L.C. (Trade Union) v. Nipissing Area Joint Hospitals Laundry Incorporation (Employer). (GRANTED).

6488-74-M: The Canadian Union of Public Employees and its Local #13 (Trade Union) v. Fairhaven Home for Senior Citizens (Employer). (GRANTED).

6489-74-M: Canadian Union of Public Employees Local 424 Office and Clerical Employees (Trade Union) v. Stratford General Hospital Corporation (Employer). (GRANTED).

6490-74-M: Stratford Hospital Employees' Union Local 424, Canadian Union of Public Employees (Trade Union) v. Stratford General Hospital Corporation (Employer). (GRANTED).

6500-74-M: Service Employees' International Union A.F. of L., C.I.O., C.L.C. Local 183 (Trade Union) v. Versaservices Ltd (A Division of VS Services Ltd) Trenton Memorial Hospital (Employer). (GRANTED).

6501-74-M: Service Employees' International Union A.F. of L., C.I.O., C.L.C., Local 183 (Trade Union) v. VS Services Ltd (Food Management Services) Trenton Memorial Hospital (Employer). (GRANTED).

6529-74-M: Retail Clerks Union, Local 486, Chartered by the Retail Clerks' International Association (Trade Union) v. Loblaws Limited (Employer). (GRANTED).

6530-74-M: Canadian Union of Public Employees, Local 1023 (Trade Union) v. Sudbury General Hospital of the Immaculate Heart of Mary (Employer). (GRANTED).

6531-74-M: Canadian Union of Public Employees, Local 1023, C.L.C. (Trade Union) v. Sudbury General Hospital of the Immaculate Heart of Mary (Employer). (GRANTED).

6532-74-M: The Canadian Union of Public Employees, Local 161 (Trade Union) v. St. Joseph Hospital Sisters of Charity of Ottawa (Employer). (GRANTED).

6533-74-M: The Canadian Union of Public Employees, Local 1182 (Trade Union) v. Sudbury Memorial Hospital (Employer). (GRANTED).

6534-74-M: Canadian Union of Public Employees, and its Local No. 904 (Trade Union) v. Temiskaming Hospitals (Employer). (GRANTED).

6535-74-M: Canadian Union of Public Employees Local No. 258 - C.L.C. (Trade Union) v. The Board of Directors of The Sudbury and Algoma Sanatorium Association (Employer). (GRANTED).

6536-74-M: Canadian Union of Public Employees, Local 139 (Trade Union) v. North Bay Hospital Commission Operating the North Bay Civic Hospital (Employer). (GRANTED).

6539-74-M: The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. - A.F. of L. - C.I.O. and C.L.C., and its Local Union 1383 (Trade Union) v. Lanark Manufacturing Company (Employer). (GRANTED).

6547-74-M: Local Union No. 103 of Canadian Union of Operating Engineers (Trade Union) v. The St. Catharines General Hospital (Employer). (GRANTED).

6548-74-M: Service Employees Union, Local 204 (Trade Union) v. VS Services Ltd., St. Andrews Hospital, Midland (Employer). (GRANTED).

6572-74-M: Civil Service Association of Ontario (Trade Union) v. Collingwood General & Marine Hospital (Employer). (GRANTED).

6574-74-M: Civil Service Association of Ontario (Trade Union) v. Greater Niagara General Hospital (Employer). (GRANTED).

6581-74-M: Local 965 United Rubber, Cork, Linoleum and Plastic Workers of America (Trade Union) v. Reid's Holdings (Belleville) Limited (Employer). (GRANTED).

6586-74-M: The Canadian Union of Operating Engineers, Local 104 (Trade Union) v. St. Mary's General Hospital, Kitchener, Ontario (Employer). (GRANTED).

6587-74-M: International Union of Operating Engineers Local 796 (Trade Union) v. Carleton Place and District Memorial Hospital (Employer). (GRANTED).

6645-74-M: Civil Service Association of Ontario (Inc.) (Trade Union) v. Hotel Dieu Hospital, Kingston, Ontario (Employer). (GRANTED).

6661-74-M: Local Union No. 772 of the International Union of the Operating Engineers, A.F. of L., C.I.O., C.L.C. (Trade Union) v. The Welland County General Hospital (Employer). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING OCTOBER

5090-73-R: The International Brotherhood of Electrical Workers, Local 2028 (Applicant) v. The Regional Municipality of Durham (Respondent) v. Canadian Union of Public Employees and Canadian Union of Public Employees Local No. 53; Canadian Union of Public Employees Local No. 54; Canadian Union of Public Employees and its Local 74; Canadian Union of Public Employees and its Local 129; Canadian Union of Public Employees and its Local No. 250; Canadian Union of Public Employees (Intervener). (GRANTED).

Unit: "all employees of the respondent in the Regional Municipality of Durham in its Works Department save and except foremen and persons above the rank of foreman, office, clerical and technical staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation periods."

Number of names of persons on revised voters' list		217
Number of persons who cast ballots	210	
Ballots segregated and not counted	4	
Number of ballots marked in favour of applicant	83	
Number of ballots marked in favour of intervener	123	

5223-73-R: The Canadian Union of Public Employees and its Local 251 (Applicant) v. The Regional Municipality of Durham (Respondent). (GRANTED).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING
OCTOBER

6262-74-M: Canadian Union of Public Employees and its Local #960 (Applicant) v. Oshawa Public Library Board (Respondent). (AFFIRMATIVE).

REFERENCE TO BOARD PURSUANT TO SECTION 96

6352-74-M: Colautti Brothers Marble Tile and Carpet Inc. (Employer) v. The Ontario Provincial Conference Marble, Tile, Terrazzo, Cement Masons, Resilient Floor Layers and their Helpers of the Bricklayers, Masons & Plasterers International Union of America (Trade Union). (TERMINATED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

5846-74-R: Canadian Union of Public Employees (Applicant) v. Thunder Bay District Health Unit (Respondent). (REQUEST DENIED).

5999-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Canada Building Materials Company (Respondent). (REQUEST DENIED).

6291-74-R: International Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Formosa Spring Brewery (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) v. Group of Employees (Objectors). (REQUEST DENIED).

6481-74-R: Canadian Steelworkers' Union (Applicant) v. Lely Limited (Respondent). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

4738-73-U: United Radio Electrical and Machine Workers of America (Complainant) v. Beaver Electronics Limited (Respondent). (REQUEST DENIED).

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5470-74-U: Ward Shellington and Those Persons Named In Schedules "A" Attached Hereto (Complainants) v. Imperial Tobacco Products (Ontario) Limited, Tobacco Workers International Union, Local 323, Charles Hill, Alexander Jackson, Sydney Harker, John Wynd, Albert Battell, Anstruther Williamson, George Jones, Harvey Stewart, Leslie Cook and Bruce Starkey (Respondents). (REQUEST DENIED).

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of two additional stores in Windsor detract from the appropriateness of the single store and that is to be determined by an examination of the relationship among the three stores.

7. The Windsor stores are part of the chain and as we have indicated there is a consistency of operations and an application of company practices and policies in the stores. The personnel policies originate from the company's head office and are intended to cover all of the two thousand company restaurants throughout the world - the greatest number of which are in North America. There is no specific policy which would set apart the Windsor area and if the company's personnel policies were to be considered as a factor in determining the appropriate bargaining unit it would tend to support a national or at the very least an Ontario bargaining unit rather than a Windsor bargaining unit.

8. The operations manager oversees the Windsor, London, Kitchener and half of the Toronto Market, and this organizational factor indicates a broader bargaining unit than the Windsor area. Also, the Windsor area is part of a Detroit-Windsor marketing area so that Windsor again is not a distinct area under this organizational head.

9. There is an area supervisor who is responsible for the Windsor stores and oversees basic operations on a day to day basis within the company's policy. He supervises the store manager who hires and fires staff with the approval of the area supervisor. The store manager also assigns and transfers employees within the store. It is clear, however, that both the area supervisor and the store manager function within the confines of the company's policies so that in examining the relationship between the area supervisor and the store manager there is nothing to indicate a special relationship for the Windsor stores that would set them apart as a distinct and separate functional unit.

10. The only other factor which demonstrated a relationship is the interchange among employees at different stores. However, while there is some interchange, the majority of the recorded instances seem to have taken place for special events. For example, there were a number of crew picnics where crews from one store substituted so as to allow the crews from another store to attend the picnic. Also, some employees trained at one store were transferred to another store which was newly opened. But more important in assessing the relationship created by the transfers is the factor that there is a high turnover of employees. The employer's evidence indicated the turnover rate was three hundred to four hundred per cent a year with employees working for only a six to nine month duration.

11. In these circumstances the transfer of employees has no impact on the day to day operations of the employer. If seniority were to be negotiated transfers would not have any great or real impact on the

seniority of bargaining unit employees and any difficulties arising in those circumstances would be minimal. Moreover, the extent of transfers demonstrated on the record is minimal and does not tend to create such a relationship among the Windsor stores that demonstrate that they should be forged into one bargaining unit or that collective bargaining in one store would have an adverse impact on the operations of the other stores in Windsor.

12. Accordingly having regard to the evidence and the submissions of the parties the Board finds that all employees of the respondent at McDonald's Restaurant located at 883 Huron Church Line, Windsor, Ontario, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except the Swing Manager and persons above the rank of Swing Manager, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

14. A certificate will issue to the applicant.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C. October 31, 1974.

1. I dissent.

2. For reasoning similar to that set out in my dissent in Hotel & Restaurant Employees Union, Local 743 v. Ponderosa Steak House, Board File No. 6122-74-R (as yet unreported) I would find the appropriate geographic unit to be all employees of the respondent at Windsor.

6540-74-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. PHILIPS ELECTRONICS INDUSTRIES LTD. (Respondent) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: W. E. Cook for the applicant; J. V. Cuff and J. W. Rawley for the respondent; J. Pender for the objectors.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER P. J. O'KEEFFE: November 4, 1974.

1. This is an application for certification for a group of security guards employed by the respondent.

. . .

3. Having regard to the agreement of the parties, the Board further finds that all security guards employed by the respondent to protect its

property at 116 Vanderhoof Avenue, Leaside, in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and persons regularly employed for not more than twenty-four hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. There was a statement of desire filed in opposition to the instant application and if given credence would justify an order directing a representation vote.

5. Mr. Jack Pender gave testimony before this Board with respect to the origination and circulation of the statement of desire. It appears that on Tuesday, October 8, 1974, at approximately 1:00 p.m. in the afternoon a meeting of the security guards in the employ of the respondent took place in the first aid room. Seven security guards were in attendance at the meeting. It was at this meeting that it was decided that a petition should be started up. Mr. Pender indicated that he took the responsibility of preparing the preamble to the document. During the course of the evening shift two security guards were approached and agreed to sign the document. Mr. Pender at his own expense, forwarded the document by Registered Mail to the Board's offices.

6. Mr. Cook proceeded to cross-examine the witness on his evidence adduced before the Board. It appears that Mr. Pender along with his colleagues were approached by Joe Martin on Monday, October 7, 1974 with respect to a meeting of employees. Mr. Martin was described by Mr. Pender to be the senior security guard in the employ of the respondent. Mr. Martin is couched with the authority while the supervisor, Mr. Bob Kay is absent from work to supervise the other plant guards. It was indicated to the Board that it was Mr. Martin who arranged for the meeting of employees whereat the initiation of the document was spawned.

7. The Board has often stated in past decisions that it requires direct and first hand evidence of origination and circulation of statements indicating opposition to representation by an applicant trade union. The Board is implicitly suspicious of these petitions where they follow closely upon the signing by such petitioners of membership cards in an applicant trade union. These suspicions are fostered by the Board's experience that employees will most often be inclined to identify their interests with that of the employer in the face of an organizational campaign conducted by a trade union seeking representative rights. Therefore failure by a group of objectors to adduce first hand evidence of origination and circulation will inevitably cause the Board to set the document aside. And, it does not follow that because the petition has been set aside that the statement of desire is necessarily a product of management influence. Failure by the objectors to adduce first hand evidence of origination and circulation will cause the Board to conclude that the petition may not be a true and voluntary expression of employee desires. Or, in other words, the voluntariness of the document has not been proven. (See; The Pigott Motors (1961) Limited Case 63 CLLC

¶16,264 at p. 1130; Willow Press Limited Case OLRB M.R. February 1971 59 at page 62).

8 In the instant case, Mr. Joe Martin appears to have arranged the meeting whereat the decision to start a petition was reached. He is also an employee in the bargaining unit, who, in Mr. Kay's absence exercises supervisory control over other members of the bargaining unit. We do not find on the basis of the evidence before us that there was necessarily management influence brought to bear on the employees who indeed signed the petition. Nevertheless, we are not satisfied, in absence of Mr. Martin's attendance at the hearing for purposes of adducing direct evidence of his participation in the events leading to the decision to initiate a petition, that the document is a voluntary signification of employees' desires.

. . .

10. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: November 4, 1974.

I dissent.

Initially, I may say I am in agreement with the majority that there was no management influence brought to bear on the employees who signed the petition.

My quarrel with the majority is their finding that it was necessary that Mr. Joseph Martin needed to attend before this Board to give direct evidence of his participation in the initiation of the petition, and that as a result of his absence, the Board is unable to find that the document represents a voluntary signification of employees' desires.

When the application was made by the applicant trade union, the Board caused to be posted its usual forms wherein it advised employees that if they object to the application, they may file with the Board a statement of desire setting forth their objections.

After this posting, I concede that Mr. Martin telephoned certain of the guards for the purpose of discussing whether or not they wished to be represented by the applicant trade union. The majority of the guards attended, and in view of the discussion among them Mr. Jack Pender prepared and circulated the petition. No attack has been made on the evidence of Mr. Pender.

I would find that the origination of the petition took place at that meeting and was as a result of the discussions which took place

between the guards. To me, I find it too narrow a view to say that the origination of the petition took place during the calls made by Mr. Martin to his colleagues. One could assume that at the meeting, the guards might very well have rejected the filing of any opposition to the application.

Having made that finding, it follows that there has been credible evidence before the Board from Mr. Pender with regard to the origination, preparation and circulation of the petition and the petition reflects a voluntary signification of the desires of the employees.

Accordingly, I would direct a representation vote of the employees to ascertain whether they wished to be represented by the applicant trade union.

6354-74-R: Retail Clerks International Association (Applicant) v. ORANGE-ROOF CANADA LIMITED (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Nelson Reed for the applicant; J.B. Noonan for the respondent.

DECISION OF THE BOARD: November 6, 1974.

1. This is an application for certification.

. . .

4. The applicant seeks certification for a bargaining unit of "all female and male tapmen, bartenders, beverage waiters, bar boys, improvers and doormen employed by the respondent in London, save and except bar manager and persons above the rank of bar manager", and claims that the mandatory wording of section 6(2) of The Labour Relations Act dealing with craft bargaining units is applicable.

5. The respondent contests both the application of section 6(2) in these circumstances and the appropriateness of the bargaining unit under section 6(1). It suggests that the only appropriate unit consists of "all employees of the respondent at London, Ontario, save and except supervisors, persons above the rank of supervisor, office and sales staff, security staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period."

6. In relying on section 6(2) of the Act the applicant must establish:

- (1) the group of employees concerned exercise technical skills or are members of a craft by reason of which they are distinguishable from other employees;
- (2) the group of employees concerned commonly bargain separately and apart from the other employees through a trade union that, according to established trade union practice, pertains to such skills or craft;
- (3) the application is made by a trade union pertaining to such skills.

(See Art Wire and Iron Co. Ltd. 54 CLLC ¶17,080; and see generally Willes, The Craft Bargaining Unit (1970).)

7. At this point in the history of collective bargaining before this Board it is too late to deny that most of these employees in question (save for the doormen) exercise technical skills or are members of a craft by which they are distinguishable from other employees. This Board has often certified "all tapmen, bartenders, beverage waiters, bar boys and improvers" with the usual exception as a bargaining unit under section 6(2); (see The Hotel & Restaurant Employee's and Bartenders International Union, Local 412 v. The Canadian Motor Hotel (Sault Ste. Marie) Limited [1966] OLRB Rep. p. 138; Local 197 of the Hotel and Restaurant Employees' and Bartenders' International Union v. Wentworth Arms Hotel Limited, Board File No. 17381-69-R; Local 280 of the Hotel and Restaurant Employees' and Bartenders' International Union v. Pilot Holdings Limited, Board File No. 781-60-R; Hotel and Restaurant Employees' and Bartenders' International Union, Local 280 and Cedarbrae Hotels and Homes Ltd., Board File No. 1593-71-R; Hotel and Restaurant Employees and Bartenders' International Union, Local 280 v. Skyline Hotels (Canada) Limited, Board File No. 12675-66-R; and Local 280 of the Hotel & Restaurant Employee's and Bartenders' International Union v. Harold Gross Limited, Board File No. 10075-64-R) and we would note that this description refers to persons both male and female; (see Harold Gross Limited (supra)). Thus, save for the doormen (and the applicant did not argue that these people were commonly associated in the work of the unit) these people meet the first requirement of section 6(2). Moreover, the purpose of the legislation being to protect the interests of those trade unions which have craft characteristics, this Board has always given a liberal interpretation to the terms "technical skills" and "members of the a craft"; (see Art Wire and Iron Co. Ltd. et al, 54 CLLC ¶17,080).

8. As for the second requirement, these same cases, reflecting trade union practice in relation to such employees in this industry, eliminate it as an impediment to the applicant's claim. There is no need for the applicant to establish that these specific employees in this specific company commonly bargain separately and apart having done so for the industry in general; (see The Steel Co. of Canada Ltd. 46 CLLC ¶16,463; N. Slater Company Limited 52 CLLC ¶17,029). Thus cases such as Dupont of Canada, Limited [1965] OLRB Mthly. Rep. 538 are of no application. Finally, in this regard, we would note that whatever the reasoning of the majority in Art Wire and Iron Co. Ltd. (*supra*) in causing the applicant to satisfy this second requirement with references to its own practices, we prefer the opinion of the panel in Pre-Con Murray Limited [1969] OLRB Mthly. Rep. p. 1003 to the effect that this is only necessary where there is no suggestion that any other trade union bargains for such employees on a craft basis.

9. However, the major stumbling block to the applicant's request under section 6(2) is in establishing that it pertains to such skills. While possibly the best way to meet this requirement is to adduce evidence before the Board of a previous history or practice of representing such technical or craft units, (see Automatic Fuels Ltd. [1966] OLRB Mthly. Rep. p. 22) it would appear that the submission of the trade union's constitution clearly stipulating such representation would also suffice (see Pre-Con Murray Limited (*supra*)). In this case the applicant undertook to establish its relationship to this craft group by the adduction of previous bargaining history. But before assessing this evidence it is important to note that such evidence cannot point to "all employee" bargaining units that merely include such people (see particularly Firestone Tire and Rubber Co. [1963] OLRB Rep. 491; and see Dupont of Canada, Limited (*supra*); Ben Bruinsma and Sons Limited, [1964] OLRB Mthly. Rep. 647); nor can sporadic instances of such representation establish that an applicant pertains to such skills (we believe that cases such as Campbell Says Co. Ltd. [1966] OLRB Mthly. Rep. p. 1091 and Automatic Fuels Ltd. (*supra*) are sufficiently analogous to stand for this proposition, at least where an applicant proceeds in the way that this applicant has).

10. The applicant claimed to represent (1) a unit of bartenders at the Royal City Labour Association in Guelph; (2) a unit of bartenders employed in the Horizon Room at the Winnipeg Airport; (3) a unit of bartenders employed by the Vagabond Motor Inn in Regina, Saskatchewan; and (4) a unit of bartenders employed in the Pig and Whistle in Regina.

11. Unfortunately for the applicant the Guelph bargaining unit would appear to be an all employee unit. And while the applicant's bargaining history in other provinces will be noted by the Board (see Art Wire and Iron Co. Ltd. (*supra*) where the Board accepted evidence of an applicant's United States experience), it did not produce either

certificates or collective agreements to evidence this history. Furthermore, even if all of what the applicant claims could be proven it would be quite insufficient to establish that it pertains to such craft skills. Thus for all of these reasons the applicant has failed to bring itself within the mandatory wording of section 6(2) of the Act.

12. This brings us to a consideration of the appropriateness of this proposed bargaining unit under section 6(1). While an applicant may be successful under this section after failing to establish its claim under section 6(2) (see Dutch Laundry and Dry Cleaners Ltd. [1960] OLRB Rep. p. 405; Automatic Fuels Ltd. (supra)) it must establish that the unit is appropriate for collective bargaining and the Board is not obligated to so find only because the employees exercise technical skills or are members of a craft. In fact, this latter point is obvious given the separateness of sections 6(1) and 6(2).

13 In determining the appropriateness of a proposed bargaining unit the Board is guided by the community of interest among the employees (Toronto Electric Commissioners [1966] OLRB Rep. p. 687); the history of collective bargaining in this specific work environment (Board of Education for the Township of East York 57 CLLC ¶18,064); an aversion to fragmentation of the unit (Caulfield Burns and Gibson Ltd [1966] OLRB Rep p. 115); and the organizational structure of the employer (Toronto Electric Commissioners [1968] OLRB Rep. p. 687) to mention a few of the important considerations. To assist the Board in examining the community of interest of these employees as set out in the Usarco case [1967] OLRB Rep. p. 526, all that was produced by the parties was the fact that these employees are physically separate from other employees (a product of the liquor licencing laws in this province, no doubt), but that they were paid the same wage skills and earned the same fringe benefits of other employees. Thus, very little justification was presented by this applicant to fragment the labour relations of this employer and while it may be necessary for a Board to assist collective bargaining by at least initially accepting smaller bargaining units in some industries that have been historically difficult to organize, (see Woodward Stories (Vancouver) Limited and Graphic Arts International Union, Local 210 and Bakery and Confectionary Workers International Union of America, Local 468, British Columbia Labour Board, September 20, 1974, as yet unreported) there was no evidence brought to our attention in this regard nor was any agreement presented. Accordingly this application is dismissed.

6347-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. TAMCO LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members E. Boyer and H.J.F. Ade.

APPEARANCES AT THE HEARING: H. Carl Anderson and Bruce Lee for the applicant; Leonard P. Kavanaugh, Leonard Neal and James S. Rowlinson for the respondent; Hugh B. Geddes, Q.C. for the objectors.

DECISION OF THE BOARD: November 6, 1974.

1. This is an application for certification.

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3. The unusual feature of this case is that a group of ten employees of the respondent filed a statement of desire with the Board signifying their objection to being included in an "all employee" bargaining unit and at the hearing all of the parties to this application agreed upon a bargaining unit description which excluded them. Thus the bargaining unit proposed by all parties to this dispute was recited to the Board as "[a]ll employees of the respondent at its plant in Windsor, Ontario, save and except foremen, persons above the rank of foreman, office staff, sales staff, skilled tradesmen and their apprentices, set up men, and students employed during the school vacation periods". (emphasis added)

4. In supporting this proposal, counsel to the objectors (the tradesmen) emphasized a number of considerations he considered relevant. First, all of these employees "felt an identity within themselves" in that they had gone through a common apprenticeship and technical schooling to obtain their journeymen status. Thus they felt no particular kinship in their work with the production workers, many of whom are women (60 to 70%) and all of whom are less skilled. Another respect presented to the Board was that the bulk of these skilled tradesmen were recruited from England and were recruited on the basis that they would not be going into a union shop, and others who have been here for a time have had union experience and want no more of it. The general ethics under which these employees live was apparently expressed by one of the tradesmen, Mr. Elliot, when he reportedly said, "We are skilled men in our trades. We think for ourselves." Thirdly, it was argued that "the incentive to achieve" possessed by these men would be eroded if they were included in the unit and the union had only approached one of them in any event. Finally, it was suggested, on behalf of the objectors, that, at least for many months, they had dealt with the company on a separate basis through the Skilled Trades Committee established in October, 1973 - a committee set up to "iron out" individual problems confronted by individual tradesmen.

5. In supporting the proposal the employer told the Board it could live with the resulting fragmentation particularly in light of the quite distinct and separate location of these employees within the plant, and

in light of the distinctive qualities of their work. Thus he was confident that no jurisdictional disputes would arise and that should these employees subsequently elect collective bargaining a "tag end or separate unit" would fit in quite nicely. And just to emphasize how physically distinct this group was, counsel to the respondent suggested that the tooling these men do could be located at a different physical location and outside the plant - in fact it was noted that many shops similar to the respondent's contract their tooling out. Accordingly, he concluded with a rather strong implication that the proposed unit was appropriate in itself without necessary regard to the agreement of the parties. But we note that some of these tradesmen are engaged in general maintenance in all areas of the plant.

6. The trade union endorsed the proposed unit and merely assured the Board that a "numbers game" was not being played. It was said that if the Board will permit this, the trade union certainly had no objection. However, it is of note that subsequent to the hearing the trade union attempted to resile from this agreement by a letter addressed to the Board and dated October 2, 1974. Its sole reason for trying to do so was that "[a]fter further consultation and discussion" it did not think the unit was appropriate. But unfortunately for it, this Board cannot function effectively if the agreements made before it by parties in interest can be considered inoperative by "second thoughts" or "second guessing". Therefore on numerous occasions this Board has not permitted one of the parties unilaterally to repudiate such an agreement and we affirm the principle on this occasion as well; (see Brockville General Hospital, 57 CLLC ¶18,061; Fonthill Lumber Ltd., 64 CLLC ¶16,305; Trane Co. of Canada, Ltd., [1967] OLRB Rep. 865). Accordingly we must ignore the trade union's letter dated October 2, 1974.

7. We stated at the outset that this is a unique case and again emphasized this in that it is most unlikely that the bargaining unit agreed to by the parties could be achieved in contested litigation before this Board. Contrary to the purport of the respondent's representations to us, we could not find this unit to be appropriate for collective bargaining (particularly if it had not been accompanied by an agreement of the parties). In light of this Board's substantial experience in these matters it has always found "all employees, save and except foremen, persons above the rank of foreman, office and sales staff" as constituting an appropriate bargaining unit in these circumstances; (see Steel Co. of Canada, Ltd., 46 CLLC ¶16,463; N. Slater Co. Ltd., 52 CLLC ¶17,029; Firestone Tire and Rubber Co. of Canada Ltd. et al, 65 CLLC ¶16,058; see also Jones, Self-Determination vs Stability of Labour Relations (1960), 58 Mich. L. Rev. 313). Moreover this concern for an all inclusive bargaining unit with all its difficulties is evidenced in a number of other contexts as well; (see Essex Health Association [1967] OLRB Rep. 716 hospitals; The Board of Education for the City of Toronto, Board File No. 16830-68-R schools; The Board of

Education for the Borough of North York, Board File No. 18118-70-R libraries). There was no evidence that the tradesmen were under a separate form of supervision or paid in such a unique way that one bargaining unit would be inappropriate. Moreover, some of the tradesmen perform general maintenance functions throughout the plant, thereby interacting with other production employees. The real claim of these tradesmen was that they did not want a trade union and that has never been a factor relied upon by the Board except as such desires are reflected in membership evidence or representation votes.

8. Even if there is a community of interest among these tradesmen (and contrary to this it must be emphasized that they are within the same plant and one sensed that their community of interest was founded more in both their male sex and aversion to trade unionism than in the totally different nature of their work, their skills and their conditions of employment), they have not established a sufficient practice or history of dealing separately with management. Their committee was formed as recently as 1973 and, despite its existence, it seems to have merely facilitated individual communication with management. But most importantly, this unit would not be appropriate by virtue of what has been characterized as the Board's aversion to bargaining unit fragmentation; (see Sack and Levinson, Ontario Labour Relations Board Practice (1973) p. 60, and Corp. of The Township of Markham [1969] OLRB Rep. p. 592) - an aversion based upon a policy derived by implication from both trade union history and the separate approach to craft units in contrast to other kinds of bargaining units stipulated by the legislation.

9. Thus the following quote by Coleman can be viewed as a concise summary of that policy as well as an indication of this concern of the Board. J.R. Coleman, The Labour Gazette (Nov. 1964) p. 956 cited in Herman, Determination of The Appropriate Bargaining Unit (1966) at p. 42. It reads:

"Collective bargaining would surely be less stable and less flexible if big industrial plants were fragmented into trade groups each of which would surely have built protective walls about itself with little regard to the impact of changing technology."

In other words, while labour Boards have been criticized for not supporting and encouraging larger bargaining structures (see Herman, *supra*, p. 956 and Cardin, Canadian Labour Relations in an Era of Technological Change (1967) p. 25, p. 44) they have been quite conscientious in not unduly fragmenting individual industrial plants. And accordingly, although it has been said that the impact of determining an appropriate unit is no broader than upon the respective parties to an individual application (Steel Co. of Canada Ltd.

(supra)) this Board has had a real regard for the evolution of an effective labour relations policy in the Province of Ontario in pursuing its responsibility in this area of the legislation.

10. Now, having said all of this, is the proposed unit any more appropriate because it comes before the Board with the blessing of all of the parties to this application.

11. The baseline to any analysis in this area always begins with three paragraphs culled from The Fonthill Lumber Ltd. case, 64 CLLC ¶16,305 at pp. 1259-60. The first reads:

"This Board, of course, has a duty to perform its functions under The Labour Relations Act in a way which, consistent with its jurisdiction and the requirements of the Act, will best serve in the public interest, to preserve and promote the objects of peaceful, co-operative and satisfactory relations between labour and management. In our opinion, it is well within the clear spirit and intent of The Labour Relations Act that, consistent with the furtherance and attainment of these ends, the Board, where practicable, should, as much as possible, assist and encourage the parties, through mutual cooperation, to solve and settle their own differences. The system of collective bargaining provided for under The Labour Relations Act is obviously intended to keep public or government intervention at a minimum and to preserve to the parties as much freedom as possible to work out their own differences on matters relating to the negotiation and contents of a collective agreement."

The second reads:

"The Act clearly makes the determination of the appropriateness of the unit a matter for the discretion of the Board. It is obvious that the Board has always treated the desires of the parties as a very important, if not a crucial factor, in the exercise of this discretion. If the parties, who should know about their own affairs and

what is good for them, agree that, for their own particular purposes, a certain bargaining unit described in language agreed to and understood by them, is appropriate for collective bargaining, or that certain employees because of their duties and responsibilities should or should not be included in a bargaining unit with other employees performing different duties and responsibilities, it is difficult in principle to conceive why their agreement should not receive paramount consideration in the determination or settlement of these matters. It seems to us that a particularly strong case for acceptance of an agreement is made out where the agreement resolves differences which, as in the instant case, fall within the category of matters which may be bargainable in the negotiation of a collective agreement. It is, of course, open to the parties, if they wish, to negotiate a collective agreement embodying a different bargaining unit of employees from what the Board itself might find or has in fact found to constitute an appropriate unit."

But the attention is always directed to the third paragraph which reads:

"The Board, of course, should not as a matter of discretion, or cannot as a matter of law, accept and give its seal of authority to every agreement that the parties may see fit to make concerning matters which come before it. Needless to say, the Board cannot accept an agreement which is not authorized by law, or is not in the public interest, or purports to affect persons who are not employees under The Labour Relations Act, or consents to the Board exercising a jurisdiction which it does not possess under the Act. Also, of course, if the effect of the agreement is patently contrary to how the Board itself would deal with the merits of the matter, the Board may, depending upon all the circumstances, decide that it is not a proper one and refuse to accept it."

12. Therefore there are times and circumstances when the agreement of the parties who presumably know their capacities and needs best is determinative (The Fonthill Lumber case itself; Brontex Holdings Ltd. [1969] OLRB Rep. p. 976), and there are times and circumstances when the agreement of the parties will be ignored because it does violence to a fundamental and well established Board policy - a policy that is likely to have caused untold reliance on the part of all parties whose industrial relations are regulated by this Board; (see Caulfield Burns and Gibson Limited, [1966] OLRB Rep. 115; Riverside Hospital of Ontario, [1971] OLRB Rep. 10; Brockville General Hospital, 57 CLLC ¶18,061; Trane Company of Canada, Limited, [1967] OLRB Rep. 865; Glen Jantzi Limited, [1967] OLRB Rep. 915).

13. To select which category any case or set of facts falls into is often a difficult choice. The parties that come before this Board are generally experienced in labour relations and well represented and this case would not appear to be an exception. Hence when such people ask the Board to give its imprimatur to a structure they (the parties) perceive as best accommodating their needs, a simple rejection based on "Board policy" is hardly an adequate response.

14. But sometimes even experienced parties will agree to a short-run solution to their particular difficulties that is unlikely - in light of the experience of the Canada industrial relations system - to stand the test of time. Moreover these short-run experiments are likely to have adverse effects upon, not just the parties before the Board, but also the people collaterally associated with parties in the communities in which they reside.

15. Of course it can be said that the parties can do what they want to do without the assistance of the Board (as even recommended in the Brockville General Hospital case (supra)) and cause these same difficulties. Hence why should not the Board approve such agreements? But the response to this is, just as obviously, that this Board does not have to condone or approve of activity over which it has no control. In other words, the Board recognizes the capacities of parties to agree to a diverse number of bargaining structures but, at the same time, it is not about to encourage those forms it deems detrimental to the long-run goals of industrial peace in Ontario.

16. Finally, in these circumstances before us, all that can be said is that we believe this agreement falls into the latter category of agreements - a short-run experiment that is likely to cause an unstable bargaining structure in the long-run and we, accordingly, refuse to find the proposed bargaining unit appropriate.

17. Thus, subject to any representations the parties wish to make in respect to the appropriate bargaining unit, we would find all employees

of the respondent at its plant in Windsor, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation periods, constitute a unit of employees of the respondent appropriate for collective bargaining.

18. And, again subject to any representations the parties may wish to make as outlined above, the Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on September 11, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

19. Thus a certificate will be issued to the applicant ten days after the receipt of this decision by all parties unless any one of them requests a further hearing - a right assured to counsel for the respondent by the Board.

5966-74-R: United Steelworkers of America (Applicant) v. THE CANADIAN BLOWER AND FORGE COMPANY LIMITED (Respondent) v. Groups of Employees (Objectors).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: L. Ingle, B. Ormsby and J. Jardine for the applicant; J. Cuff and K.J. Leader for the respondent; and J. H. Shaw, G. Hinsperger, W.F. Cooper and H. A. Radatus for groups of employees.

DECISION OF THE BOARD: November 7, 1974.

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2. At the hearing of this matter the applicant challenged the list of employees filed by the respondent. In addition, the applicant opposed the exclusion of "sales servicemen" and "methods planners" from the proposed bargaining unit. Accordingly, an Examiner was appointed to inquire into and report to the Board on the list of employees filed by the respondent and on the duties and responsibilities of those persons occupying the positions of sales servicemen and methods planners. The Examiner has filed his report with the Board and the Board has received written representations from the parties on the report.

3. The respondent contends that Jack Hendry, classified as a sales servicemen, should be excluded from the bargaining unit on the ground that his community of interest lies with salesmen (or sales engineers)

and because he spends the bulk of his time in the field. The evidence, however, fails to establish any close relationship between salesmen and sales servicemen. In fact, while a salesman may accompany the serviceman to a customer's premises, the salesmen are not employed by the respondent but are engaged by separate, although probably related, corporations. It cannot therefore be said that there is common supervision between the two groups. A more serious consideration — although it was not argued by the respondent — is whether the servicemen's real community of interest is with the plant, rather than the office unit. Mr. Hendry testified that, although he reports to the Vice-President of Manufacturing and Plant Manager (Mr. Adare), he obtains his work assignments from the Chief Engineer, who supervises a number of other office employees. Moreover, he is not hourly-rated but receives a weekly salary. While he has some contact with some non-office personnel (e.g., shop foremen, storeroom clerk) he also has regular communication with the sales and engineering departments. While his service work takes him away from the office for much of his time, he has a desk in the Drafting Department where he writes reports and occasionally, when the service work is slack, does other desk work which he described as "drawing fan curves and doing fan rating checks. He is, apparently, the only person classified as a serviceman and, while he might just as appropriately be included in a plant unit, we are of the view that he has sufficient community of interest with the rest of the office personnel to warrant his inclusion in the office unit.

4. The respondent also sought the exclusion of its two methods planners, Maurice George and Siegfried Wirsching. Among other things, the methods planners do some inspection work, some tool designing and, on occasion, check prices and costs. It cannot be seriously contended that those particular functions, in themselves, would warrant the exclusion of the methods planners. However, a significant proportion of the methods planners' time is spent in methods and time study work. It is to be noted that there are no piece-work rates for plant employees so that the methods and time study work performed by methods planners does not affect the remuneration of employees. Moreover, the methods planners have little, if any, direct involvement with plant bargaining unit employees concerning the establishment or review of standards for particular operations. If a dispute arises, any further checking or re-study is carried out at the request of the foreman of the affected department. While the respondent records instances of failure on the part of employees to meet standards, and while those records may be relevant in making disciplinary decisions, there is no evidence that the methods planners are either aware of individual employee records or that they play any part whatever in making disciplinary determinations. Although the evidence discloses that the methods planners attend management meetings, such meetings deal with operational problems, rather than matters relating to labour relations, wages, working conditions or collective bargaining. In the result, we conclude that the methods planners should be included within the bargaining unit. Unlike the time study

technicians in the Canadian Acme Screw Limited case, OLRB Monthly Report, February, 1967, p. 872, the methods planners in the instant case do not have discretion, authority or involvement in labour relations matters. Their duties and responsibilities are more closely akin to those performed by similar groups in Ferranti-Packard Electric Limited, OLRB Monthly Reports, September, 1968, p. 572, and in Canadian Motor Lamp Company Limited, OLRB Monthly Reports, May, 1969, p. 189.

5. Following a review of the lists of employees filed by the respondent, the applicant sought the addition of Joseph Ditzend, who described his job as "initial sales". The evidence discloses that the job involves the processing of orders, quoting on orders and making certain assessments with respect to returned and damaged goods. Unlike the salesmen, Ditzend is employed directly by the respondent. He is a salaried employee and deals, in the main, with the respondent's project engineer. He can see no basis for his exclusion from the lists of employees and accordingly, his name has been added thereto.

6. Finally, the applicant requested the addition to the lists of the names of four employees, Messrs. Jackson, Yoworski, Lidkea and Cooper, all classified by the respondent as supervisors who, according to the applicant, do not exercise managerial functions within the meaning of section 1(3)(b) of the Act. In addition, the applicant requests leave to amend its bargaining unit description by deleting "supervisors" as an excluded category and substituting "managers" therefor. The evidence of Ronald Jackson, agreed by the parties to stand for all of the supervisors, was that the supervisors are responsible for assigning work, inspecting the quality of work, issuing corrective instructions if work is not done properly, and to some extent training others. While the supervisors have no power to hire or recommend the hiring of employees, they have some function in assessing work performance. For example, during the three-month probationary period, the supervisors make verbal reports to the Chief Engineer on work performance and in this connection Jackson testified that he had effectively recommended the dismissal of two probationary employees. The supervisors may grant time off up to one day and apparently have the authority to refuse to recommend the granting of time off in excess of one day. In addition, supervisors can authorize overtime, without limitation and can, on their own authority, do some minor purchasing.

7. While the witness Jackson testified that he did not complete written annual evaluation parties, he stated that he was in fact consulted by his superior and asked for oral assessment of employee performance on an annual basis. On at least one occasion he himself initiated an annual evaluation interview, as a result of which he made certain recommendations to his superior about an increase in remuneration for a group of employees.

8. As the Board has previously observed, titles are not decisive in determining whether white-collar personnel exercise managerial functions. In a number of cases, persons nominally classified as "supervisors" have been included in the proposed bargaining unit, notwithstanding their designation. However, in many of those cases the rationale for their inclusion has been that they have more than one function and, while they have some responsibility of a managerial nature, their prime purpose is to perform work similar to that performed by persons clearly within the bargaining unit. In the instant case there is no evidence whatever to indicate that the supervisors perform any work of a non-supervisory nature. While their supervisory duties may be limited, it cannot be said that they are so circumscribed as to have no effect on the employment status of the persons working under them. The case is somewhat similar to Richardson, Bond & Wright Ltd., OLRB Monthly Reports, March 1965, p. 638, where, although the particular individual in question had no power to hire, fire, grant increases, etc., he devoted 100% of his time to supervising other employees and was therefore excluded from the bargaining unit. We can act only on the evidence before us. All parties were given full opportunity to adduce any relevant evidence. The Board cannot assume that supervisors in the instant case perform bargaining unit work. Accordingly, the Board finds that Messrs. Jackson, Yowski, Lidkea and Cooper exercise managerial functions within the meaning of section 1(3)(b) of the Act and the applicant's request that their names be added to the lists of employees filed is denied, as is its request that the proposed unit description be amended to delete "supervisors" and substitute "managers".

9. At the hearing the parties agreed to the exclusion of security guards (one), confidential secretary to the President (who is also the confidential secretary to the Vice-President, Manufacturing, the Vice-President, Sales and the Plant Superintendent), confidential secretary to the Treasurer, confidential secretary to the Personnel Manager, professional engineers (4) and graduate engineers (3), persons regularly employed for not more than 24 hours per week (4), students employed during the school vacation period and students employed on a university or college co-operative training program (1). As a result of these agreements and in view of the Board's ruling on the disputed categories, as recorded above, the revised lists contain the names of 73 persons, 54 of whom are claimed in membership by the applicant.

10. There was filed with the Board a statement of desire bearing the signatures of 39 persons, 6 of whom were claimed in membership by the applicant. Thus, the applicant's uncontested evidence of membership on behalf of 48 persons is sufficient to entitle it to outright certification. Accordingly, it will be unnecessary for the Board to inquire into the origination and circulation of the statement of desire.

11. The Board therefore finds that all office, clerical and technical employees of the respondent in Kitchener, save and except supervisors, persons above the rank of supervisor, salesmen, security guards, confidential

secretary to the President, Vice-President Manufacturing and Vice-President Sales, confidential secretary to the Treasurer, confidential secretary to the Personnel Manager, Professional Engineers, Graduate Engineers, students employed during the school vacation period, students employed on a university or college co-operative training program, persons regularly employed for not more than 24 hours per week and persons covered by a subsisting collective agreement between the respondent and the United Steelworkers of America, constitute a unit of employees of the respondent appropriate for collective bargaining.

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12. A certificate will issue to the applicant.

3902-73-JD: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Complainant) v. ILENA CONSTRUCTION COMPANY LIMITED; LABOURER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; GENERAL CONTRACTORS SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND THE TORONTO FORM WORK ASSOCIATION (Respondents).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: A.E. Golden and A. McIsaac for the complainant; David A. Wetmore and James R. Dawe for Ilenda Construction Limited and The Toronto Form Work Association; A.M. Minsky and L. Castaldo for Labourer's International Union of North America, Local 183; B.W. Binning and G. A. Beigneul for General Contractors Section of the Toronto Construction Association.

DECISION OF THE BOARD: November 8, 1974.

1. This is a complaint concerning work assignment pursuant to section 81 of the Labour Relations Act. The complaint itself is of a very unusual type. The Board heard seven days of evidence and one day of argument in order to deal with the extremely complex issues involved. At the outset we should like to thank counsel for their assistance in the very difficult matters involved in this case.

2. Parties to the Dispute

The complainant in the present case is the International Association of Bridge Structural and Ornamental Ironworkers Local 721 (hereinafter referred to as Ironworkers, Local 721) which is the major bargaining agent in the Toronto area for rodmen in industrial commercial and institutional construction. The respondents in the present case are Ilena Construction Company (hereinafter referred to as Ilena) which is

the employer of the employees at the job site of the work in dispute; and Labourer's International Union of North America, Local 183, (hereinafter referred to as Labourer's Local 183) which trade union is the bargaining agent of the employees at the job site. At the commencement of this matter the two parties requested permission to be added as parties to this complaint. The Toronto Construction Association (hereinafter referred to as the T.C.A.) which is the accredited bargaining agent for all employers of rodmen in the industrial commercial and institutional sector of the construction industry in the Toronto area. The T.C.A. was added as a party because it is a party to the area collective agreement under which the complainant claims the work in question should be performed. Also added was the Toronto Form Work Association (hereinafter referred to as the T.F.W.A.) which is party to the collective agreement under which Ilena claims the work in question is being performed. Throughout this hearing the interest of this association was identical to that of Ilena. They were both represented at the hearing by the same counsel.

3. The Work in Dispute

The work assignment in question concerns all rod work on an extension to a garage at a shopping plaza. The definition of rod work includes the handling, bending, tying, burning and welding of reinforcing steel rods in concrete.

4. What distinguishes this jurisdictional dispute from most other jurisdictional disputes is that the type of construction (i.e. part of a commercial complex - specifically a shopping plaza) is central to this dispute. It is at this point that the interest of the T.C.A. and T.F.W.A. can be considered. The area collective agreement between the Ironworkers, Local 721 and the T.C.A. clearly covers commercial construction. Thus the interest of the T.C.A. is in preserving the operation of that collective agreement with respect to inter alia commercial construction. On the other hand, the collective agreement between Labourer's Local 183 to jurisdiction to perform the commercial work in question is through an agreement with the Metropolitan Toronto Apartment Builders Association (hereinafter referred to as the M.T.A.B.A.) and the Toronto Building and Construction Trades Council (hereinafter referred to as the T.B. & C.T.C.) whereby an owner-builder can do work on certain projects using residential collective agreements rather than commercial collective agreements. The M.T.A.B.A., after the commencement of the hearing, requested that it be added by the Board as a party to these proceedings. However, the Board ruled that such a request was made at too late a stage of the proceeding. This matter of the owner-builder clause in the M.T.A.B.A./T.B. & C.T.C. agreement will be dealt with in detail later in this decision.

5. Criteria in Work Assignment Disputes

Although work assignment disputes generally arise out of a jurisdictional claim by competing trade unions to certain work, the adjudication of such disputes by this Board (or any of the other tribunals that makes such decisions) is based, not upon assessing jurisdictional claims as such, but on the basis of various criteria by which the work should be allocated to one trade rather than another. The criteria for this allocation decision has developed over the years, but the Board has always been careful to explain that any list of such criteria was not exhaustive nor is any one criteria determinative of the dispute. In the present case we propose to look at the following criteria and relate the evidence to each such criterion.

1. Collective Bargaining Agreement
2. Jurisdictional Arrangements
3. Area Practice
4. Skills and Training
5. Economy and Efficiency.
6. Collective Bargaining Agreements

As is noted above the complainant Ironworkers Local 721 is party to a collective agreement with the T.C.A. which is the accredited bargaining agent for employers of rodmen in the industrial commercial and institutional sector of the construction industry in the Toronto area. However, there is no collective agreement between the complainant Ironworkers Local 721 and the respondent Ilena. On the other hand Ilena is party to an agreement with Labourer's Local 183. That collective agreement covers all employees of the respondent company.

7. There was tendered in evidence a document purporting to be a collective agreement between Ironworkers, Local 721 and 270915 Ontario Limited. That collective agreement is signed on behalf of the numbered company by John Delorenzo and on behalf of Ironworkers Local 721 by James Johnson and John Abbruzzese. The circumstances surrounding the signing of that agreement are as follows:

Once the Ironworkers had made a claim to performing the work in dispute at the present job site, there were several meetings between the Ironworkers Local 721 and John Delorenzo the manager of Ilena Construction. As a result of those meetings a collective agreement between the numbered company (which now operates as "Hardrock Forming") was signed. That collective agreement is in the

same form as the standard area agreement between the Ironworkers and the T.C.A.

8. Although the numbered company was not added as a party, nor was any claim made that Ilena and the numbered company are one employer within the meaning of section 1(4) of the Labour Relations Act, the agreement does indicate that an agent of Ilena Construction, John Delorenzo was prepared to recognize that the collective agreement with Labourer's Local 183 had limitations in term of performing commercial construction in the Toronto area. Indeed, Hardrock Forming the name under which the Numbered Company subsequently operated has performed work on commercial projects.

9. The project in question is clearly a commercial project. The claim of Labourer's Local 183 to perform the work in question stems ultimately from an agreement between the Metropolitan Toronto Apartment Builders Association and the Toronto Building and Construction Trades Council. Just how that claim arises can only be understood as a result of a lengthy discussion of the history of that agreement since it was signed on September 20th 1969. For convenience certain parts of the agreement will be quoted in full:

"BETWEEN: THE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION

hereinafter called the "Association"

- and -

THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL (Residential Division)
on its own behalf and on behalf of the
Local Unions who are signatories hereto,

hereinafter called the "Council"

PREAMBLE

WHEREAS the Association and the Council and the Local Unions who are signatories hereto wish to enter into an agreement with regard to residential construction, as defined herein, being performed by the members of the Association whose names appear in Schedule "A" attached hereto and who are hereinafter called the "members";

AND WHEREAS it is the desire of the Association and the Council and the Local Unions who are signatories hereto, to promote and encourage the residential construction industry and the productivity for the protection of the public and for those persons engaged in the residential construction industry, by the establishment of rules and regulations to govern

employment wage scales and working conditions and to eliminate unfair and destructive practices and to promote the amicable settlement of differences which may arise between the members of the respective organizations who are bound by this agreement and also to maintain industrial peace;

AND WHEREAS the Council has formed a Residential Division of Local Unions to govern relations in the residential construction field.

IT IS THEREFORE AGREED:

ARTICLE I

1.01 This agreement shall apply to Residential Construction, that is, the on site construction of all types of apartment buildings only and their natural amenities, and shall not apply to commercial, industrial and institutional construction which is tendered through the normal bid depository systems, provided that apartment projects under the Ontario Housing Authority tendered through the normal bid depository system shall be covered; provided however, where a member owns any land directly or indirectly, beneficially or otherwise, upon which he intends to construct a commercial, industrial or institutional building, then the terms and conditions of this agreement, and not the terms and conditions of the commercial unions, shall apply.

1.02 The members and Local Unions listed in Schedules "A" and "B" respectively, agree individually and collectively that the terms and conditions of this agreement shall apply to and are binding upon each of them as evidenced by the signatories hereto, of their respective duly authorized representatives.

1.03 A Local Union affiliated with the Council other than those names in Schedule "B" hereto may request the Council in writing to be included in the group of Local Unions already covered by this agreement, and if the Association and the Council agree that such Local Union has signed collective agreements with a sufficient number of contractors in the particular trade over which the said Local Union has work jurisdiction, then such Local Union may be added to this agreement and be bound by the terms and conditions hereof as if an original party. It is agreed and understood that this Article is not to be interpreted so as to prohibit any member of the Association from engaging, subletting to, or retaining any contractor or subcontractor or unorganized trade for trades not listed on Schedule "B" or added thereto from time to time.

ARTICLE 2

2.01 The geographic area covered by this agreement shall be that area known as "Geographic Area #8" established and used by the Ontario Labour Relations Board in matters of certification is as follows:

"Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario."

ARTICLE 3

3.01 The members shall only let or sublet work, save and except concrete forming work and masonry work to contractors who are in contractual relationship with Local Unions who are affiliated with the Council and bound by this agreement in accordance with Article 1.02 and 1.03 hereof or have given written notice of their intention to enter into such contractual relationship. This Article must be read subject to and is subject to the terms and provisions of Article 1.03.

3.02 At such time as 80 per cent of those builders named in Schedule "C" hereto become members of this Association and bound by this agreement, the Association shall thereupon recognize Labourers Local Union 183, as the exclusive bargaining agent for their employees, save and except foremen and persons above the rank of foreman, and they shall immediately bargain in good faith and make every reasonable effort to make a collective agreement.

3.03 The Council agrees that members of Local Unions affiliated with it and bound by this agreement as aforesaid shall not work on residential construction projects which have been declared unfair by the Council.

In addition on the same day September 20th, 1969, certain letters of understanding were also added to the agreement including an addendum which reads in part as follows:

1. IT IS AGREED by the parties hereto that in connection with Article 1.01 of the hereinbefore mentioned agreement, upon any member of the Association intending to construct a commercial, industrial or institutional building, then notwithstanding Article 1.01 and Article 1.03 of the said agreement, all masonry work and concrete forming work must be performed only by contractors who are in contractual relationship with trade unions affiliated with the Toronto Building and Construction Trades Council, Residential or Commercial Division thereof. (See Schedule "B" to the said agreement.)

2. IT IS AGREED AND UNDERSTOOD that notwithstanding Article 3.01 of the hereandbefore mentioned agreement, a member may let or sublet masonry work and concrete forming work to contractors who are in contractual relationship with trade unions affiliated with the Council.

3. In connection with Article 3.02 of the said Agreement the fourth line thereof is amended as follows:

"..... Union 183, as the exclusive bargaining agent for their labourers, save and"

IT IS UNDERSTOOD AND AGREED that labourers shall be permitted to continue to perform such duties as are normally performed by them in the residential construction industry.

10. The basic effect of this document which is not in any sense a collective agreement was to require the use of certain trade unions on apartment projects constructed by members of the M.T.A.B.A. In return for this agreement the members of the M.T.A.B.A. were allowed, under the provisions of Article 1.01, to use residential agreements on commercial projects.

11. Subsequent to the signing of the agreement between M.T.A.B.A. and T.B. & C.T.C. there commenced an organization campaign of employees in concrete forming in residential construction. This campaign was conducted by the Council of Concrete Forming Trade Unions which includes the applicant, Ironworkers Local 721, a sister local of the respondent Labourer's Union namely, Labourer's International Union of North America, Local 506, the Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 172 and the United Brotherhood of Carpenters and Joiners of America, Local 1190. The council apparently negotiated a collective agreement which operated until 1971. The evidence of the chairman of the intervening T.F.W.A. was that there were difficulties in the administration of that collective agreement because of the jurisdictional claims of the various constituent trade unions. Further, during 1971 Labourer's Local 506 was replaced by Labourer's 183 as a member of that council of trade unions.

12. A particular interest at this point is the evidence of James Dawe the chairman of the T.F.W.A. and himself a forming contractor in the Toronto area. At the time when notice to renew the agreement with the Council of Concrete Forming Trade Unions was given, it appears that a number of contractors had already discussed a collective agreement with the respondent Labourer's 183. Further at the first meeting between the contractors and the Council of Concrete Forming Trade Unions, Local 183 which was a member of the council at that time, did not appear. Mr. Dawe indicated that the contractors wanted some assurance that the Council would remain a council of trade unions however no assurance was forthcoming and negotiations broke off and to date there has been no renegotiation of the agreement which expired in 1971. Mr. Dawe further stated that the contractors then "divorced" themselves from the Council, and signed collective agreement with Labourer's Local 183.

13. Of interest at this point is the evidence of John Stefanini, the Business Manager of the respondent Labourer's 183. His evidence was that on September 10th, 1971, Local 183 entered into a collective agreement with Zaph Construction Limited and that by the end of September

there were nine collective agreements with forming contractors including the respondent Ilena Construction. This collective agreement is in a form of an agreement between the intervener T.F.W.A. and Labourer's Local 183 and extends from the 24th of September 1971 to the 1st of November 1974.

14. The claim of Labourer's Local 183 is that, as a member of the Toronto Building and Construction Trades Council and as a member of the Council of Concrete Forming Trade Unions, it is entitled to come within the scope of the agreement between the M.T.A.B.A. and the Toronto Building and Construction Trades Council. In support of this claim Labourer's Local 183 tendered evidence to the effect that members of the M.T.A.B.A. who have attempted to take benefit of article 1.01 of that agreement, have been unable to obtain employees from the residential division of the Toronto Building and Construction Trades Council and particularly from the Council of Concrete Forming Trade Unions.

15. The significance of this in the present case results from Article 1.01 of the M.T.A.B.A. agreement with the T.B. & C.T.C. and in particular that part of article 1.01 which reads:

"where a member owns any land directly or indirectly, beneficially or otherwise, upon which he intends to construct a commercial, industrial or institutional building, in the terms and conditions of this agreement, and not the terms and conditions of the commercial union, shall apply."

In the present case the owner of the property in question is Village Developments Limited. Village Developments is one of the number of companies including Fern Holdings Limited which are effectively under the direction of Roger Davidson and are owned by various trusts and companies arising out of the Harry Davidson estate.

16. Fern Holdings and Associated Companies are a member of the M.T.A.B.A. The position of Ilena is that Zone Developments is the company with which they have the contract for the form work in question. The claim is thus that a member of the M.T.A.B.A. indirectly has an interest in land on which a commercial building is being constructed and therefore falls within the ambit of section 1.01 of the M.T.A.B.A. agreement with the Building Trades Council.

17. Accordingly, Zone Developments Ltd. is allowed to contract the work to Ilena and construct on commercial property a work using employees covered by a residential agreement.

18. As is noted above the agreement between the M.T.A.B.A. and the Building Trades Council is not a collective agreement. (See also Cadillac

Development Corporation Limited case OLRB Rep. 536 (Aug)). The main thrust of the agreement is set out in article 3.01 referred to above. That article, however, excepts concrete form work and masonry work. If that is the case, it is difficult to see how any claim relating to concrete forming work arises out of the M.T.A.B.A. arrangement. However, we are also of the view that the connection between Fern Holdings Ltd. and the M.T.A.B.A. is not sufficient explicit to make Zone Developments and Village Developments fall within the ambit of article 1.01 of that agreement. The member of the M.T.A.B.A. is Fern whereas the owner of the property in question is Village Developments Ltd. and the contractor is Zone. It was not demonstrated that Fern Holdings Ltd. owns the land indirectly nor on the other hand was it indicated that the Davidson Estate is a member of the M.T.A.B.A. Thus we are of the view that in the present case Labourers 183 cannot claim to be performing the work in accordance with the arrangements made on September 20, 1969 between the Metropolitan Toronto Apartment Association and the Toronto Building and Construction Trades Council.

19. On the other hand the evidence is clear that Ilena Construction Ltd. signed a collective agreement with Local 183 in 1971 at a time when Local 183 was a member of had just left the Council of Concrete Forming Trades Unions of which Ironworkers Local 721 is a member. That collective agreement was not the result of the certification by this Board of Labourer's Local 183, nor was any evidence presented concerning the representative position of the Labourer's at the time that agreement was entered into. However, that agreement between Local 183 and Ilena Construction covers residential concrete forming as can be seen from the following excerpt:

"WHEREAS the Association, acting on behalf of those of its members who are signatory to this agreement, and the Union, wish to make a common collective agreement with respect to certain employees of the Employees engaged in Residential Concrete Forming Construction, save and except Town Houses, Maisonettes, Single and Semi-detached Units and Row Housing, and to provide for and ensure uniform interpretation and application in the administration of the collective bargaining agreement.

AND WHEREAS in order to ensure uniform interpretation and application of the collective agreement, the said Union recognizes the formation by the Employers of the Association and agrees to deal with the said Association as the agent of the Employers who are members thereof in negotiating and administering a common collective agreement and agrees not to negotiate with any of the said Employers on an individual basis.

AND WHEREAS the Employers recognize the Union as the collective bargaining agent with respect to the employees of the Employers covered by this agreement:

NOW THEREFORE it is agreed as follows:

ARTICLE I - RECOGNITION

1.01 Each of the Employers recognizes the Union as the collective bargaining for all construction employees, whose classification fall into a category listed on Schedule "A" attached hereto, of the members of the Association, whose signatures are affixed hereto, while working within the area known as Geographical Area Number 8 established and used by the Ontario Labour Relations Board in matters of certification and as follows: Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing, and the Towns of Oakville and Milton in the County of Halton, and the Township of Pickering in the County of Ontario."

Although the recognition clause does not contain the limitation indicated in the preamble to that agreement, Labourer's Local 183 has admitted that it is a residential agreement in order to make the claim under the M.T.A.B.A. agreement dealt with above.

20. In sum when looking at the various collective bargaining relationships the following statements can be made: that the collective agreement of Ironworkers Local 721 deals with commercial construction and the collective agreement held by Labourer's Local 183 deals with residential construction. The employees in question are not bound by a collective agreement with Ironworkers Local 721. On the other hand, the agreement with Labourer's Local 183 did not cover the work in question. On that basis the collective agreements, referred to do not resolve the question of proper work assignment in favour of either the Ironworkers Local 721 or Labourer's Local 183.

21. JURISDICTIONAL ARRANGEMENTS BETWEEN TRADE UNIONS

In the preceding section of this decision we dealt with relationship between Labourer's Local 183 and the Council of Concrete Forming Trade Unions and Ironworkers 721. The Ironworkers tendered in evidence a letter dated October 15, 1971, addressed to Allan McIsaac the Business Manager of Ironworkers Local 721 and signed by Michael J. Riley, Business Manager, of the Ontario District Council Labourer's International Union of North America. It will be recalled that this letter is dated shortly

after Labourer's Local 183 started signing agreement with various employers concerning concrete forming. That letter read in part as follows:

"This is to confirm our discussions and agreement reached in principle, in connection with the present state of affairs in the Residential Forming Field for Toronto and vicinity, subject to a final draft document on the following points:

The Labourers' International Union of North America recognize the craft jurisdiction of the Ironworkers Union in connection with the installation of reinforcing rods for Concrete Forming Contractors in the Residential Apartment Construction field in Toronto and vicinity."

A carbon copy of that letter was sent to, amongst others, John Stefanini, Business Manager of Local 183. This document was tendered by the Ironworkers as evidence that after the signing of the collective agreement with the respondent Ilena Construction, Labourer's had recognized the craft jurisdiction of Ironworkers Local 721 over reinforcing rod work in residential construction.

22. Mr. Stefanini in his evidence told the Board that he was surprised when he saw the letter tendered in evidence by the Ironworkers, Local 721. He also indicated that he had no discussion with Mr. Riley concerning that letter and that no part of the agreement proposed in the letter was ever implemented. He indicated that he was aware that there were talks concerning jurisdiction but that no understanding had been reached. Mr. Stefanini was questioned further on the matter and he indicated that Mr. Riley had not kept him informed of the talks concerning the Ironworkers jurisdiction but that he did not know the subject matter of these discussions. He indicated that he had never received a copy of the letter and that in any event Mr. Riley as Manager of the Ontario District Council had no authority to bargain on behalf of Local 183.

23. Some four months after giving the above evidence Mr. Stefanini was confronted by a letter dated October 21, 1971, to M. J. Riley, Business Manager of the Ontario District Council and signed by himself Business Manager with a carbon copy to Mr. A. McIsaac. That letter reads as follows:

"This will acknowledge your letter of Friday, October 15, 1971, to Mr. A. McIsaac. Please be advised that we concur with our General President in not concurring with the contents of your correspondence.

Under the circumstances, we believe it would be advisable for us to enter into direct negotiations with Local 721 of the Ironworkers. In all fairness to the Ironworkers, this matter has been dragging on too long and we are looking forward to an early finalization of our differences. Perhaps, Brother McIsaac may prefer to deal with the people who have the authority to make an agreement.

We would like to express our appreciation for your co-operation and assistance in this matter."

24. Mr. Stefanini attempted to explain the conflict with previous evidence as a matter of that letter being of minor importance and therefore one that he had forgotten about. On the other hand he admitted that at the time relations between Mr. Riley and Mr. Stefanini were not good and in fact the correspondence of Mr. Riley at that time was treated as an office joke. We find such an explanation hard to accept. We are certain that the matters dealt with in the letter from Mr. Riley and Mr. McIsaac were of such importance to Labourer's Local 183 that we find it hard to conceive that Mr. Stefanini had forgotten Mr. Riley's correspondence. Indeed the hasty reply from Mr. Stefanini to Mr. Riley is evidence of Mr. Stefanini's concern with what Mr. Riley was doing at that time that such concern should be easily forgotten is difficult to understand. In fact, we find the conduct of Mr. Stefanini in giving his evidence before this Board shocking. It can only be regarded as a deliberate attempt to mislead the Board with respect to the matter before it.

25. In view of the above we are prepared to accept a letter from Mr. Riley to Mr. McIsaac at its face value as indicating that after the agreement with Ilena Construction was signed, the Ontario District Council of the Labourer's was prepared to acknowledge the jurisdiction of the Ironworkers over rod work.

26. In this section of this decision, we are considering jurisdictional arrangements between competing trade unions. Such jurisdictional arrangements cover a wide range relationships between trade unions. These may range from such formal documents as "agreements of record." to less formal "understandings" between trade unions to evidence of recognition of jurisdiction. As criteria in a work assignment dispute, the more formal the arrangement, the more weight is given to the particular arrangement, simply because such documents frequently take years of negotiations between the trades involved before they are endorsed.

27. In the present case, although no formal document or agreement exists, it is clear that after the Labourer's Local 183, signed the collective agreement with Ilena, the Ontario District Council of the

Labourer's was prepared to recognize the jurisdiction of the Ironworkers union over rodwork. The Ironworkers Local 721 tendered evidence that on a number of occasions the same recognition of jurisdiction had been made. In such circumstances we are prepared to find that the arrangements between the Labourer's Union and The Ironworkers Union are such that the Labourer's Union had recognized the jurisdiction of the Ironworkers to rodwork and this criteria favours an assignment of the work in question to the Ironworkers Local 721.

28. AREA PRACTICE

All of the parties to this dispute tendered substantial evidence with respect to area practice. Although cognizant of the pitfalls in accepting this kind of evidence, the Board frequently relies on area practice in determining proper work assignment. In the present case the evidence is clear that residential rodwork is performed by members of Local 183 whereas commercial and institutional rodwork is performed by members of Ironworkers Local 721.

29. There was tendered evidence that a number of commercial projects in the Toronto area have been performed by members of Labourer's Local 183. However, when compared with the amount of commercial projects performed under the Ironworkers agreement this amount is negligible.

30. It is thus clear that area practice favours an assignment to members of the Ironworkers Local 721 on commercial projects.

31. SKILLS AND TRAINING

The position taken by Labourer's 183 and T.F.W.A. is that the work performed by the rodmen in question is completely unskilled. This of course, does not substantiate a jurisdictional claim in their favour. Ironworkers Local 721 on the other hand take the position that certain aspects of rodwork require significant skills. In particular the problem of blue print reading and lay out. On the other hand, the evidence indicates that for the employees in question such tasks are performed by the rod foreman. Furthermore, it appears that welding is not frequently performed in rodwork of the type done by the employees in the present dispute.

32. In recent years the Ironworkers union has participated in the creation of a course for developing skills amongst rodmen. Such a course is in conjunction with the union's apprenticeship programme.

33. Although we are of the view that the Ironworkers have not established that the employees in question are skilled and that such a skill relates peculiarly to its members, we are of the view that such attempts to increase the skill of employees through developed courses

of study, is a method by which a trade union can protect its jurisdictional claim with respect to a certain type of work.

34. ECONOMY AND EFFICIENCY

Evidence was tendered on behalf of the T.F.W.A. that the style of collective agreement that the forming contractors have with Labourer's 183 lead to efficiency of operation because there is no jurisdictional difference between Form Setters, Reinforced Concrete Workers and Form Helpers. On the other hand, the evidence is clear that the employees doing rodwork operate as a defined group of employees under the rod foreman. Both the T.C.A. and Ironworkers Local 721 tendered evidence to the effect that there were no significant problems in installing reinforcing rods under their collective agreement. This of course does not constitute evidence of the efficiency of using rodmen supplied by Ironworkers Local 721.

35. As a result of the evidence placed before the Board the Board cannot compare the economies and efficiencies of one trade over the other and accordingly cannot consider this factor in its determination.

36. CONCLUSION AND WORK ASSIGNMENT

For the foregoing reasons, it is clear that Ironworkers Local 721 have jurisdiction in the Toronto area in the installation of reinforcing rods on commercial projects. We propose therefore to make the assignment in the present case to that trade union. The Board therefore directs:

the respondent Ilena Construction Company Limited to assign all work in connection with the installation of reinforcing rods, namely the handling, bending, tying, burning and welding of such rods at the shopping plaza project at the corner of Islington Avenue and Rexdale Blvd. in the Borough of Etobicoke to members of the complainant The International Association of Bridge, Structural and Ornamental Ironworkers, Local 721.

6395-74-M: WINCO STEAK N' BURGER RESTAURANTS LIMITED (Employer) v. The Hotels, Clubs, Restaurants, Taverns Employees' Union, Local 261, Ottawa, Ontario, Chartered by the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O. (Trade Union).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members H.J.F. Ade and P. J. O'Keefe.

APPEARANCES AT THE HEARING: Ian Binnie and Owen V. Gray for the employer; Denis J. Power, Frank Grella and Mary Ann Skinner for the trade union.

DECISION OF THE BOARD: November 13, 1974.

1. The Minister has referred to the Ontario Labour Relations Board, pursuant to section 96 of the Act, the question as to whether the Minister of Labour has the authority under The Labour Relations Act to appoint a conciliation officer.

2. The question arises out of a transaction concluded on April 19, 1974 between the employer herein and Versafood Central Limited with respect to certain premises in the St. Laurent Shopping Centre in Ottawa known as Heritage Restaurant.

3. At the time of the transaction, the trade union held bargaining rights for all employees at Heritage Restaurant with certain exceptions not here relevant. Timely notice of desire to bargain for the renewal of a collective agreement was given by the trade union on May 2, 1974, and detailed proposals for amendments were submitted on July 3, 1974. On August 1, 1974, the solicitors for the trade union wrote the following letter to the employer:

RE: V.S. SERVICES LIMITED - HERITAGE RESTAURANT
- ST. LAURENT SHOPPING CENTRE OTTAWA, ONTARIO -
HOTEL, CLUBS, RESTAURANT, TAVERNS EMPLOYEES
UNION LOCAL 261 - OUR FILE 1110

Kindly be advised that we are the solicitors for the above referred to Union.

It has been brought to our attention that you are purchasing the business of V.S. Services Limited at the Heritage Restaurant at the St. Laurent Shopping Centre in the City of Ottawa. As you are no doubt aware V.S. Services and the above referred to Union are parties to a Collective Agreement, a copy of which is enclosed for your benefit.

Pursuant to Section 55 of the Ontario Labour Relations Act you are deemed to be a successor employer of all of the employees presently working for V.S. Services at that location. You are therefore bound by the terms of that Collective Agreement.

It has been brought to our attention that certain of the employees have been given notice by V.S.

Services of their termination of employment with that firm due to the sale of the operations to your company. This would be a serious breach of both the Collective Agreement and the Labour Relations Act and I must advise you that unless there is continuing employment for those employees concerned we will be seeking a declaration from the Ontario Labour Relations Board on their behalf.

We look forward to dealing with you with the same harmonious relationship that existed between the Union and your predecessor.

4. The trade union requested conciliation services on August 20, 1974 because the employer refused to bargain.

5. It is the position of the trade union that the transaction referred to above constitutes a sale within the meaning of section 55 of The Labour Relations Act and that it is consequently entitled to request conciliation services between itself and the employer. The employer denies that the transaction was a sale of a business within the meaning of the Act and submits that a trade union is therefore not entitled to the relief it seeks. The employer also submits that even if the Board should decide that the sale of a business has occurred, the employer has changed the character of the business so that it is substantially different from the business of the predecessor employer within the meaning of section 55(5) of the Act.

6. The relevant portions of section 55 are as follows:

55.-(1) In this section,

(a) "business" includes a part or parts thereof;

(b) "sells" includes leases, transfers and any other manner of disposition, and "sold" and "sale" have corresponding meanings.

(5) The Board may, upon the application of any person, trade union or council of trade unions concerned, made within sixty days after the successor employer referred to in subsection 2 becomes bound by the collective agreement, or within sixty days after the trade union or council of trade unions has

given a notice under subsection 3, terminate the bargaining rights of the trade union or council of trade unions bound by the collective agreement or that has given notice, as the case may be, if, in the opinion of the Board, the person to whom the business was sold has changed its character so that it is substantially different from the business of the predecessor employer.

7. The transaction in question was carried out in accordance with the terms and conditions of an Offer to Purchase made by the employer to Versafood Central Limited and accepted by the latter on June 25, 1974. Paragraph 1 of the Offer to Purchase reads as follows:

1. WINCO STEAK N' BURGER RESTAURANTS LIMITED (hereinafter called the "Purchaser") offers to purchase from VERSAFOOD CENTRAL LIMITED (hereinafter called the "Vendor") through Mortgage Consultants Inc., agent for the Vendor, the leases, leasehold improvements, fixtures, trade fixtures, furniture, equipment and chattels and all other assets used in connection with the business, as of Friday, June 7th, 1974, carried on by the Vendor as Heritage Restaurant in the St. Laurent Shopping Centre in the City of Ottawa, save the Vendor's inventory of foodstuffs, smallwares, glassware, cutlery, dishes and linens and any assets leased or loaned by the Vendor.

8. The closing date was set as August 19, 1974 at 11:00 o'clock in the afternoon. The purchase price of \$175,000 was apportioned as follows: Leasehold Interest \$100,000; Leasehold Improvements \$49,000; Chattels, equipment and furniture \$26,000. The evidence is that the amount apportioned to chattels was the forced price and shows an exaggerated value from the purchaser's point of view.

9. In compliance with a condition set out in the Offer, Versafood Limited obtained consent to and did assign to the employer its interest as lessee in certain leases covering the premises occupied by the former company in the St. Laurent Shopping Centre and known as Heritage Restaurant.

10. The vendor, that is Versafood Central Limited, agreed in the Offer that it would carry on its business in a good and proper name until the date of closing and that it would do nothing which would prejudice or jeopardize any of the leases or permits used and enjoyed in connection with its business.

11. It was a further condition of the Offer that the employer would obtain the approval of the Liquor Licence Board of Ontario to:

(a) the transfer of the liquor licenses used by the Vendor in connection with the business carried on by the Vendor as Heritage Restaurant in the St. Laurent Shopping Centre; and,

(b) the change of the present name of the Vendor's business to name or names satisfactory to the Purchaser.

12. The employer also agreed to pay, in addition to the purchase price, the cost of the vendor's inventory of alcoholic beverages. The vendor was to make all reasonable efforts to reduce the inventory in the normal course of its business.

13. The vendor, Versafood Central Limited, also agreed that it would fully cooperate with the purchaser and use its best efforts to assist the purchaser in its application to obtain the approval of the Liquor Licence Board of Ontario to the transfer of the liquor licences.

14. It was part of the employer's case that goodwill was not an element included in the transaction. It is true that there is no specific mention of goodwill in the documents but, in an operation such as that under review, there are, of course, no customer or order lists which can be transferred to a purchaser in the interests of goodwill. The presence or absence of goodwill is not decisive. There is provision, however, in the Offer to Purchase for the maintenance of good name and the continuation of the business up to the actual transfer, matters which are clearly related to the retention of goodwill.

15. The deal was closed in accordance with the Offer to Purchase and the employer took over the operation of the tavern and restaurant on August 19, 1974. Certain changes in decor and menu were introduced by the purchaser and will be referred to later in the decision.

16. As has been already noted, it was part of the consideration for the sale that the vendor would preserve the licences of the liquor business as a going concern until the very moment when the employer could take over its operation.

17. The staff of the predecessor employer were offered employment by the employer purchaser and a number of them were engaged in similar occupations by the employer. The evidence of the employer was that it felt a "moral" obligation to offer employment to the staff of the Heritage Restaurant.

18. Having in mind the terms of the Offer to Purchase and the broad definition of sale of a business contained in section 55 of the Act, the Board has no hesitation in finding that the transaction outlined above is a sale within the meaning of the definition.

19. As indicated earlier in the decision, the employer took the position that even if the Board found that a sale had occurred, the employer had changed the character of the business so that it is now substantially different from the business of the predecessor employer.

20. The evidence offered in support of this position established that the predecessor carried on a tavern business in which the restaurant was what might be described as a generally unspecialized type of operation based upon a menu offering a common variety of choices. There was nothing extraordinary with respect to the general decor of the dining area while it was under the direction of the predecessor employer.

21. The employer, on the other hand, offers specialized dishes from a menu restricted to items exclusively offered under proprietary names generally definitive of the type of food supplied, e.g. Steak N' Burger and Rib O' Beef.

22. In addition to its specialized menu, the employer introduced very significant and extensive changes in the decor of the restaurant and bar. This was done in order to create its own unique atmosphere. For instance, the Steak N' Burger portion of the restaurant has stalls, saddles and other items of harness used with a view to imparting a western atmosphere. A new type of equipment which tends to simplify the cooking was introduced by the employer.

23. There can be no doubt that the employer has made considerable change with respect to the type of food tendered to the customers and to the appearance and atmosphere of the premises in which the service of specialized dishes, together with the provision of alcoholic beverages, is now carried on.

24. The implementation of subsection 5 of section 55 involves the revocation of the remedial effects otherwise flowing from the provisions of section 55 of the Act following the sale of a business. Having in mind the fact that subsection 5 runs against the flow of the general intent of the section, the Board takes the view that the words "substantially different" must be viewed by the Board in the formulation of its opinion as involving a fundamental difference affecting the nature of the work requirements and skills involved in the business to the extent that continued representation by the trade union would be inadequate, inappropriate or unreasonable in all the circumstances of the particular case under review. (Reference was made to Man of Aran Ltd., [1973] OLRB Rep. June 313. That case, however, is confined to its own particular facts.)

25. In the opinion of the Board, based upon the foregoing and all the evidence, the changes brought about by the employer do not render the business carried on by employer substantially different from that conducted by the predecessor employer.

26. The Board therefore finds that the trade union continues to be the bargaining agent for the employees of the employer in the bargaining unit described in the collective agreement referred to above.

27. The answer to the question posed by the Minister is, therefore, "Yes".

5714-74-R: Labourer's International Union of North America Local Union 493 (Applicant) v. KEN BUNYAK'S BUS LINES (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

DECISION OF THE BOARD: November 15, 1974.

1. By a decision dated June 20th, 1974, the Board dismissed this application for certification by the applicant trade union. A hearing had been held on June 4th, 1974, of which both the applicant and the respondent were given due notice in accordance with the Board's Rules of Procedure. The applicant however failed to appear at the hearing, as a result of which the application was dismissed.

2. Almost three months after the Board's decision dismissing the application the applicant by a letter dated September 12th, 1974, requested the Board to reconsider its decision of June 20th, 1974, in this matter. The basis for this request for reconsideration is basically that the Board has no jurisdiction to dismiss an application on the sole basis that an applicant did not appear at a hearing, and furthermore, that there was evidence at the time of the hearing on which the Board could have made a decision dealing with the merits of the case before it. The applicant further explained in a letter of November 4th, 1974, that the failure to appear at the hearing was merely a matter of inadvertence.

3. The respondent takes the position that it is now too late for the applicant to make such a request. The respondent's position is that the applicant obviously did not act promptly upon dismissal of its application and that further the respondent's position has been prejudiced by its delay. The applicant by its letter of November 4th, 1974, denies that there has been an unreasonable delay and takes the further position that the Board has the power to reconsider a previous decision at any time. We are of the view that the applicant has not set out grounds to explain why the delay in requesting reconsideration

should be viewed as a reasonable delay. The letters filed by the applicant raised no matters which were not known to the applicant after the Board released its decision of June 20th, 1974, in this matter, and the Board therefore refuses to reconsider its decision of that date having regard to the time at which the request for reconsideration was made.

4. However, even if the applicant's requests were timely and the Board were to reconsider its decision of June 20th, in this matter, we are also of the view that that decision should not be reversed.

5. In dismissing the application on the basis of the failure of the applicant to appear at the hearing the Board was following a practice which it has had since its inception. In many types of applications, of course, failure of the applicant to appear means that there has been a failure of the applicant to make prima facie case. The applicant's position is that in an application for certification because of the nature of the evidence filed with the Board before the hearing there was sufficient evidence upon which to make prima facie decision in favour of the applicant.

6. The applicant takes the position that there is no provision in either the Act nor the Board Provisions of Procedures which are analogous to Rule 252 of the Rules of Practice of the Supreme Court of Ontario and that in the absence of such a provision, the Board cannot dismiss a prima facie case solely on the basis that the applicant failed to appear at the hearing. The Act in 91(12) provides as follows:

"The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions, and the Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable."

Pursuant to that provision in the Act the Board established the Rules of Procedure R.R.O. Regulation 551 as amended by O. Reg. 29/71, O. Reg. 474/71, and O. Reg. 321/73. In order to give effect to section 91(12) of the Act, the Board conducts hearings to allow the parties to a proceeding "an opportunity to present their evidence and to make their submissions." Indeed, the Board's interpretation of section 91(12) is strengthened by the explicit language of section 91(13) which reads as follows:

"The Board may, subject to the approval of the Lieutenant Governor in Council, make rules to expedite proceedings before the Board to which sections 106 to 124 apply, and such rules may

provide that for the purposes of determining the merits of an application for certification to which sections 106 to 108 apply, the Board shall make or cause to be made such examination of records and such other inquiries as it considers necessary, but the Board need not hold a hearing on such an application."

Surely, the removal of the necessity to hold hearings in cases relating to the construction industry makes clear statutory intention of section 91(12) that a hearing is the text on which the evidence and representations of the parties are to be made to the Board.

7. On the other hand, to adopt the position advocated by the applicant would place the Board in an intolerable position. While it may be that there is evidence before the Board in the present application, the only submissions made by the applicant are those contained in its Application For Certification in Form I. In fact, at the hearing of this matter, the respondent made certain submissions to the Board and the Board was not in a position, given the absence of the applicant, to have the benefit of the applicant's submissions on these matters. Further the bargaining unit claimed by the applicant to be appropriate in the present case is patently not an appropriate bargaining unit and again the Board had no further submissions from the applicant in this regard. To accept the applicant's view of these proceedings, as set out in its request for reconsideration would require the Board to hold another hearing to obtain the submissions of the applicant on these matters, even though the applicant was given full notice of the hearing on June 4th. The Board would thus be committed to a succession of hearings at the option of the applicant in such an application. Such a possibility would make the administration of the Labour Relations Act an impossible task.

8. In sum, the submissions of the applicant on its request for reconsideration fail to take into account the operation of section 91(12) of the Act. The Board in order to give effect to that provision in the Act allows the parties to present evidence and make submissions in the context of a hearing before the Board. The failure of an applicant to appear at that hearing makes it impossible for the Board to conduct a meaningful hearing and accordingly, prevents the Board from performing the statutory duties imposed upon it by section 91(12). In order to perform its duties under section 91(12), the Board developed the practice of dismissing applications when the applicant fails to appear and that practice is simply derived from a basic attempt to conduct an orderly hearing by the Board.

9. For these reasons the request for the reconsideration is denied.

6378-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. MAPLE LEAF MILLS LIMITED; MASTER FEEDS BRANCH, LONDON, ONTARIO (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members D.B. Archer and W.H. Wightman.

APPEARANCES AT THE HEARING: I.J. Thomson and D. Lewis for the applicant; Tim Sargeant and S.A. Miller for the respondent.

DECISION OF THE BOARD: November 19, 1974.

1. This is an application for certification and at the initial hearing the respondent raised a constitutional law objection to the Board's jurisdiction in this matter. The applicant claimed to be taken by surprise and the Board adjourned to this date in order to permit the applicant some time for preparation.

2. The application is in relation to the respondent's London, Ontario, warehouse which was established in 1949 to service the company's customers in London that were, before that date, serviced by the respondent's two feed mills in Chatham and Toronto. Thus, today, feed comes to the London warehouse from the respondent's feed plants in Baden and Chatham (each feed plant has some warehouse capacity but only on a forty-eight hour turnover basis), and the inventory is kept there on a monthly turnover basis. The warehouse stores one hundred tons of feed at one time and employs four warehousemen, four truck drivers, three retail clerks and two office staff. Counsel for the respondent told the Board that some sundry items are retailed at this location but the principal function of the location was as a feed warehouse. In this regard he pointed out that the warehousemen and truck drivers spent, at most, twenty per cent of their time dealing with the sundry items and only 2,500 square feet of the total 19,000 square feet housed by the warehouse was allocated to the sundry items. This proportion is further emphasized by the fact that 2.5 million dollars in sales was generated by the feed aspect of the warehouse operation whereas only \$200,000 was generated by the sundry items.

3. Section 45 of the Canadian Wheat Board Act, R.S.C. 1970, C.12 reads:

Declaration

45. For greater certainty, but not so as to restrict the generality of any declaration in the Canada Grain Act that any elevator is a work for the general

advantage of Canada, it is hereby declared that all flour mills, feed mills, feed warehouses and seed cleaning mills, whether heretofore constructed or hereafter to be constructed, are and each of them is hereby declared to be works or a work for the general advantage of Canada, and, without limiting the generality of the foregoing, each and every mill or warehouse mentioned or described in the schedule is a work for the general advantage of Canada.

(emphasis added)

4. It has been noted that it is an extraordinary power that the Parliament of Canada possesses under section 92(10)(c) of the British North America Act to bring within its legislative jurisdiction "such works as, although wholly situate within the Province, are before or after their execution declared to be for the general advantage of Canada or for the advantage of two or more of the Provinces." (See Abel ed., Laskin's Canadian Constitutional Law (4th ed., 1973) p. 478.) And the validity of a declaration in such general terms has been affirmed by the courts; (see Jorgenson v. A.G. Canada, [1971] S.C.R. 725, [1971] 3 W.W.R. 149; See also The Queen v. Thumlert (1959), 20 D.L.R. (2d) 335, 28 W.W.R. 481; Chamney v. The Queen (1973), 40 D.L.R. (3d) 146 (S.C.C.)). Thus all that remains to be determined is whether the operation in question is a feed warehouse within the meaning of section 45.

5. The respondent is certainly engaged in the manufacture and distribution of feed and this warehouse in London is an essential part of its operations. Although there is no definition of the word warehouse in the legislation, it can be taken that it refers to a building in which feed is stored (whether for the purposes of retail or wholesale - see The Concise Oxford Dictionary (1964) p. 1468), and the building in question is primarily devoted to such a function. (There would appear to be no requirement that the building be used exclusively as a feed warehouse; see Letter Carriers' of Canada v. Canadian Union of Postal Workers et al (1973) 40 D.L.R. (3d) 105 (S.C.C.) p. 112 - only its principal purpose need be in relation to the storing of feed.) Accordingly, it is clear that this Board has no jurisdiction over the labour relations of the parties to this application. (For similar holdings in this general area see United Packinghouse Food and Allied Workers and Supersweet Formula Feeds, Division of Robin Hood Flour Mills Limited [1965] OLRB Rep. 212; Amalgamated Meat Cutters and Butcher Workmen of North America and Swift Canadian Company Limited [1969] OLRB Rep. 71.)

6. The application is dismissed.

5916-74-R: The Hotel and Club Employee' Union, Local 299, Toronto of the Hotel and Restaurant Employees and Bartenders International Union (A F.L.-C.I.O.-C.L.C.) (Applicant) v. CONSTELLATION HOTEL CORPORATION LIMITED (Respondent)

BEFORE: Frank V. Boscarion, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: H. F. Caley and C. Ireton for the applicant; P. J. Brunner for the respondent.

DECISION OF THE BOARD: November 19, 1974.

. . .

3. Pursuant to the decision of the Board dated July 10, 1974, the taking of a pre-hearing representation vote was directed in this matter. This vote was conducted on July 17 and July 19, 1974 and the count which was taken on September 13, revealed that the applicant did not receive a majority of the votes as reflected in the ballots as cast during the course of the representation vote. However, by letters dated July 23 and September 17, the applicant on the basis of certain alleged circumstances as set out therein, requests that the Board order a new representation vote. The grounds for such a request, it would appear, are the alleged violation by the respondent of the "no propaganda rule" during the 72 hour silent period as ordered by the Registrar, and that the alleged misconduct of the respondent was of such a nature that it prevented the employees from freely exercising their franchise.

4. The evidence as adduced in this regard discloses that as of July 4, 1974, the date of the meeting convened by the Examiner for the purpose of settling the pre-hearing vote arrangements, the parties were at odds with respect to the specific location on the respondent's premises in which the vote was to be conducted. In this regard, the applicant requested that the vote be held in the area adjacent to the employees' cafeteria while the respondent favoured a room called The Constellation Room. By letter dated July 5, the respondent advised the Registrar of its position in this regard and suggested that in the event the Board should find the Constellation Room to be unacceptable, it should then order an off-site vote. On the same date, the applicant wrote to the Registrar advising that the respondent had itself at one time suggested the area beside the staff cafeteria and that this location (which was in the basement away from the respondent's main business operations and to which the general public had no access) was conducive to a proper taking of the vote. By letter dated July 10, the Registrar advised the parties that the vote would be held on Wednesday July 17 and Friday July 19 from 2:00 p.m. to 8:00 p.m. and from 10:00 p.m. to 12:30 p.m. on each of these days and that the polling booth would be located in

the area adjacent to the employee's cafeteria. In addition, the Registrar advised the parties of the silent period commencing midnight of July 13th until the taking of the vote, during which period all interested persons were directed to refrain and desist from propaganda and electioneering. However, by letter dated July 15, the respondent advised the Registrar that the polling area as directed by the Board was unacceptable for occupancy. In this regard, there was tendered in evidence a letter to this effect from the Etobicoke Fire Department (Exhibit #3) indicating that the room in question, which was being utilized as a storeage area at this time, was still under construction, and that it lacked a sprinkler system and "exit indicating and direction". In addition, there was also filed during the course of these proceedings, a letter from the respondent's insurers (Exhibit #11) indicating that these facilities were hazardous due to the presence of live wires, improper lighting and the generally dangerous unfinished condition of the premises. By letter dated July 16, the Registrar then advised the parties that the vote would be conducted in the Constellation Room.

5. Having carefully reviewed the totality of the evidence as adduced, we are satisfied that the respondent's objections to the use of the area adjacent to the cafeteria as the polling station for the vote, were based upon a bona fide belief that these premises were inadequate for this purpose. Accordingly, we reject the applicant's submission that the respondent's actions in this regard were engineered with a view to having the vote conducted in an area (e.g. the Constellation Room) in which the voters would be accessible to management and thus open to improper influence during the course of the vote.

6. The evidence further discloses that George Pineo and Rene Royer, both of whom are union organizers in the employ of the applicant, were appointed to act as co-scrutineers at the polls on behalf of the applicant. On the respondent's side, these capacities were filled by David Wilson, an assistant to the Rooms Division Manager and Kenneth Burrows, the Executive Assistant to the President of the respondent, Mr. Calamar. In addition, Burrows occupies the position of property manager in Mr. Calamar's realty company. Immediately prior to the opening of the polls on July 17, the parties had reached agreement that only one of their scrutineers would actually be in the polling station at one time except during those short intervals when he would be in the process of being replaced by his co-scrutineer. It was also at this time that Norman Steele, the respondent's manager (and its designated agent at the count) entered the polling area while carrying a stack of printed sheets of paper. He then approached Mr. Dunbar, the Board's Returning Officer, with a view to distributing this material to the employees. Steele's evidence in this respect is that he had initially drafted a statement for the benefit of the employees whom he felt lacked comprehension in the English language. In order therefore to ensure that these employees would properly understand the meaning of the ballot, he stated that he made arrangements to have his statement translated into the four main native languages of the employees. These translations together

with the English version were subsequently reproduced on a single sheet of paper and some two hundred copies were made. The evidence establishes that at this point Pineo objected to the distribution of the material whereupon the Returning Officer directed that these papers be removed from the room. None of the voters were present during the course of these discussions and Steele immediately complied with the directions of the Returning Officer and this printed material was subsequently destroyed.

7. It is not in dispute that the majority of the employees exercised their franchise during the first two hours of the vote conducted on July 16. Pineo's testimony in this regard is that he had occasion during the course of the vote to observe that four chairs and a table had been set up in the lobby, (properly termed by the respondent as a "foyer") some twenty feet to the right of the front entrance to the Constellation Room. It is also not in dispute that the majority of the employees entered the polling area through this entrance and that the remainder of the voters utilized the back entrance adjoining the kitchen. Pineo further testified that he also observed certain officials of the respondent, who were seated in these chairs at various intervals, speak to the employees as they approached and left the polling area. These officials included David Wark, the Food and Beverage Manager, Mr. Calamer, the owner's son and a woman by the name of Arlette who was identified as the respondent's Chief Housekeeper. Upon reporting this matter to the Returning Officer, Pineo stated that all the parties were then instructed to leave the general polling area. Wark in his testimony conceded that four chairs were set up in the foyer at this time but denied the presence of a table. When asked by his counsel what his purpose was in this respect, he stated that it was merely "idle curiosity". It would appear however that matters had not ended at this point, for when certain management officials congregated in a lounge area away from a direct view of the Constellation Room, the Returning Officer was again required to direct all parties to leave this area when a shouting match developed between them and Pineo just after he had been relieved of his scrutineering duties by Royer. Wark characterized this second occasion as amounting to "childish behaviour" on the part of all concerned.

7. On cross-examination, Wark stated that Steele also joined him at the foyer location during the early hours of the vote on July 17. He further testified that Arlette had a list of employees in her possession at this time and that she had proceeded to tick off the names of the employees as they entered the voting area. When asked what was the purpose of the list, Wark replied that it was to determine "who was going to actually vote". He stated however that this operation was discontinued when it became evident that she could not keep track of all of the employees voting at this time. Arlette herself, however, was not called upon by the respondent to give evidence in these proceedings.

8. A great deal of evidence was led by the parties with respect to

the question as to whether the company officials from their vantage point in the foyer, were in a position to observe the employees in the polling room as they approached and left the immediate area surrounding the ballot box which was hidden by a curtain. In order to better enable the Board to assess this evidence which in many respects was contradictory, a view of the premises was directed. In this regard, we are now satisfied that these officials had an unobstructed view of the employees in the Constellation Room both immediately prior to and after they had cast their ballots.

9. The applicant, through Pineo, adduced further evidence to the effect that various hostesses and captains were leading and escorting various groups of employees to the voting area. He conceded however that all of these "supervisory" personnel had also themselves voted under segregated ballot. It would also appear that the applicant during the course of an Examiner's inquiry into this matter, has agreed to the inclusion of these persons in the voting constituency.

10. The respondent takes the position that there has been no violation of the silent period or breach of the "no propaganda rule" in these circumstances and that the only indiscretion committed by the respondent with respect to the presence of management personnel in the foyer for a relatively short period of time during the first day of the vote, constituted a mere voting irregularity which is not sufficient to cause this Board to set aside the results of the vote. In this regard, he cited various cases of the Board as quoted in the text "Ontario Labour Relations Board Practice" by Sack and Levinson, commencing at page 133.

11. The Board has carefully reviewed all of the authorities as cited by the applicant and respondent in the context of the discretion vested in the Board pursuant to the provisions of Section 92(5) of The Labour Relations Act. In this connection, we note that we are not dealing in the instant case with proceedings involving a request for consent to prosecute the respondent for alleged unfair labour practices, nor is this an application invoking the provisions of Section 7(4) of the Act. Our only concern in these proceedings is whether the Board in all of these circumstances can rely upon the results of this vote as representing the true wishes of the employees, the majority of whom in the instant case are immigrants and who may be particularly susceptible to outside influences. The Board has explored this matter in its explanation regarding the purpose of the "no propaganda rule" in the Rogers Majestic Limited Case D.L.S. 7-1382 (as quoted in the Wolverine Tube Division of Calamet and Hecla of Canada Ltd. Case 63 CLLC ¶16,296, at page 1228), where it states:

"Its primary object is to ensure that, so far as possible, the vote will be conducted in an atmosphere of calm and that the employees who are to participate in the vote shall not

be subjected to partisan pressures or influences as the voting day approaches. The Board's view has always been that at that point the individual employee should be left free to make a purely personal decision as to how he shall vote."

12. It is not disputed that the respondent in its propaganda has opposed the applicant and that it has taken active steps to encourage its employees to vote in these proceedings. The events surrounding the taking of this vote, however, we find were not conducive to a situation wherein the employees would likely be uninhibited in the free expression of their desires. In arriving at this conclusion, we have taken particular note of the following circumstances which would make these employees, who for the most part are immigrants, particularly susceptible, viz.: the presence of management personnel in a strategic location in the vicinity of the polling area in full view of the employees as they proceeded towards the ballot box; some employees were spoken to by these persons as they entered the Constellation Room; Arlette's actions in initially checking off the employees' names as they proceeded to vote; the commotion generated by both the applicant and the respondent in the vicinity of the Constellation Room which on two occasions required the intervention of the Returning Officer; the "cloak and dagger" scenario during which officials of both the applicant and the respondent surveyed each others activities while on the general premises of the hotel; and finally the presence as Scrutineers of relatively high ranking officials on behalf of both the applicant and the respondent. (In this latter regard, see Paragraph 2(g) of the "Registrar's Instructions Regarding Vote" and the statements of the Board in the J.R. Menard Ltd. Case (1972) OLRB M.R. 915 at page 916).

13. In the result, the Board directs that the pre-hearing representation vote conducted on July 17 and 19, 1974 be set aside and further directs that a new representation vote be held.

14. A representation vote will be taken of the employees of the respondent in the voting constituency described in paragraph #3 of the decision of the Board dated July 10, 1974. All employees of the respondent in the voting constituency described in paragraph #3 of the decision of the Board dated July 10, 1974, on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

15. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

16. The matter is referred to the Registrar.

6642-74-R: Dorothy Hall (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders' International Union, A.F. of L., C.I.O., C.L.C. (Respondent) v. KILGORAN HOTELS LIMITED CARRYING ON BUSINESS AS YE OLDE BRUNSWICK TAVERN (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and H. Simson.

APPEARANCES AT THE HEARING: B. Midanik for the applicant; J. A. Ryder and J. Troll for the respondent; S. C. Bernardo and M. Nightengale for the intervener.

DECISION OF THE BOARD: November 20, 1974.

1. This is an application for termination of the respondent's bargaining rights pursuant to section 49(2) of the Act. During the course of the hearing scheduled in this matter on November 6, 1974, several issues arose which, if resolved at this stage of the proceedings, may expedite the ultimate disposition of the instant application. The Board, therefore, undertook to determine these matters and provide written reasons therefore.

2. The first issue was raised by counsel for the respondent. Counsel argued that the wording of the relevant provisions of the collective agreement from which bargaining rights are sought to be terminated pertain to one bargaining unit of employees of several employers represented by The Toronto Hotel Association. The intervener is a member of "the association" and is thereby bound by the terms of the collective agreement. Nevertheless the suggestion is made that the composition of the bargaining unit includes all employees of the several employers (including the intervener) listed on the schedules to the agreement. It follows that if this be the case then the applicant would be unable to satisfy the Board under section 49(3) of the Act that "not less than 50% of the employees in the bargaining unit have voluntarily signified in writing..." a desire to terminate bargaining rights. (emphasis added by the Board).

3. Counsel for both the applicant and the intervener argue in reply that the plain and obvious meaning to be derived from the wording of the collective agreement is that bargaining rights are defined in terms of separate bargaining units of employees of the named employers (forty) represented by The Toronto Hotel Association. In support of this contention, reference was made to several of the articles in the agreement all of which indicate that the agreement pertains to employees of employers at particular beverage establishments. For purposes of dealing with this issue however reference will be made to the following provisions;

"MASTER COLLECTIVE AGREEMENT"

BETWEEN:

THE TORONTO HOTEL ASSOCIATION

hereinafter called the "Association"

OF THE FIRST PART

- and -

LOCAL 280 OF THE INTERNATIONAL BEVERAGE
DISPENSERS' & BARTENDERS' UNION OF THE
HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS'
INTERNATIONAL UNION, A.F. of L., C.I.O.,
C.L.C.,

hereinafter called the "Union"

OF THE SECOND PART

ARTICLE 1 - PURPOSE

- 1.01 The general purpose of this Agreement is to establish mutually satisfactory relations between licensed establishments represented by the Association in collective bargaining, their employees and the Union, and to provide machinery for the prompt and equitable disposition of grievances, and to establish and maintain satisfactory working conditions, hours and wages for all employees who are subject to the provisions of this Agreement.

ARTICLE 2 - SCOPE

- 2.01 This Agreement applies to all full-time and part-time male and female employees employed in the beverage departments in the licensed establishments listed on Schedule "G" attached hereto, as tapmen, bartenders, beverage waiters, (including waiters who operate automatic beer dispensers or other automatic dispensing equipment), bar boys and improvers and any other new classification relating to the serving of alcoholic beverages.

Article 3 - Recognition

- 3.01 The Association acknowledges that the employees in each of the units described above have selected the Union as their sole and exclusive collective bargaining agent, and it recognizes the Union as such for all the employees in each of the said Units.

DULY EXECUTED by the parties hereto this 15th day
of March A.D. 1972.

FOR THE EMPLOYER ASSOCIATION

FOR THE UNION

(4 signatures)

(8 signatures)"

4. The Board was faced with a like situation in The Sumner Printing & Publishing Company Limited Case OLRB M.R. December 1967 895 and upheld on application for judicial review by the Supreme Court in its decision (unreported) dated June 10, 1968 (per Parker J.). In that case the Board endorsed the record in the following manner;

"A more difficult question is whether the bargaining unit consists of employees of more than one employer. The respondent is party to a collective agreement with "The Employing Printers of the City of Windsor" described in the agreement as "the employer". The agreement is signed separately on behalf of seven employer firms in the printing business, and one of these is the intervener. The question which has been raised is whether the collective agreement is made with respect to one bargaining unit consisting of employees of all seven employers (as the respondent and intervener contend), or whether it is made with respect to seven bargaining units each consisting of employees of one of the employers referred to. It was not suggested that the seven firms are engaged in any joint enterprise. We are unable to conclude that the term "employer", as it is used in the collective agreement with respect to these firms, is for any reason other than convenience of reference. It is our conclusion that the document before us constitutes the collective agreement between the respondent and each of the employees therein named. Thus "the bargaining unit" material in the instant case is a unit of employees of the intervener."

5. In a like manner the Board holds that the unit of employees

affected by the instant application are employees of the intervenor employer and more particularly described in the schedules filed by the intervenor along with its reply. In reaching this conclusion the Board is also satisfied that there is no latent or patent ambiguity on the fact of the collective agreement to induce us to admit in evidence extrinsic oral evidence for purposes of ascertaining the intention of the parties to the collective agreement (see; R v Barber et al, ex parte Warehousemen and Miscellaneous Drivers' Union Local 419 68 CLLC ¶14,098 (CA) per Jessup J.A.).

6. The second issue raised by counsel for the respondent pertains to objections raised by both counsel for the intervenor and the applicant with respect to questions put to the witness Ms. Hall, during the course of cross-examination of the evidence adduced by her with respect to the origination, preparation and circulation of the statement of desire filed in support of this application. Before reciting the impugned questions the Board proposes to describe the background of events precipitating the raising of the issue. The intervenor filed schedules indicating the names and classifications of employees employed as of the date of the filing of the instant application. Schedule "A" indicated that 16 persons were employed in a full time capacity and there were 4 names appearing on Schedule "B" who, it is asserted, are employed "regularly for sixteen hours or less per week." It appears by operation of the union security provisions of the collective agreement the employer is permitted to hire this particular classification of employee without recourse to any obligation under the terms of the union security clause contained in the collective agreement. The Board determined at the hearing that these employees although they may be unaffected by the union security clause would nevertheless be deemed "part time" employees and thereby included within "the scope clause" of the agreement as set out in paragraph 3 herein. As a result such "part time" employees were considered in determining the count for purposes of section 49(3) of the Act.

7. During the course of cross-examining Ms. Hall on evidence adduced by her with respect to the origination, preparation and circulation of the petition, counsel for the respondent put these questions;

Question: Do you know the names of four employees who work part time?

Answer: The witness identified with some imprecision the four employees indicated on Schedule "B" of the intervenor's reply.

Question: How do you know they were part time employees?

Answer: The witness responded by saying that they worked in "Albert's Hall",

a section of the intervener's establishment separate and apart from the main beverage room.

Question: were they aware that there was an obligation by employees to join the respondent union?

At this juncture counsel for the applicant objected to the line of questioning put to the witness submitting that they were irrelevant to the issue of "origination, preparation and circulation" of the document. The witness at that point was excused from the witness box and directed to the witness room. The Board then heard the representations and argument of counsel as to whether we should permit counsel to continue in the manner aforesaid.

8. Counsel for the respondent union referred the Board to the allegations filed in its reply to the instant application together with its written submissions dated November 4, 1974. More particularly, the relevant portions of the reply read as follows:

"7.

The respondent further states that this application is merely the culmination of a pattern of conduct (including a failure to remit Union dues as required by the collective agreement, and employment of employees contrary to the Union security clauses of the collective agreement) which went beyond mere hostility to the Union, and was calculated to undermine the Union's bargaining rights."

And furthermore, the respondent particularized this charge in counsel's letter dated November 4, 1974;

"1.

2. During the term of the current collective agreement, the employer has systematically undermined the bargaining rights and interfered with the rights of employees by:
 - (a) not notifying the union of vacancies for jobs at the Brunswick as required by Article 4.07 of the collective agreement.
 - (b) not giving the union an opportunity to fill the vacancies with union members as required by the collective agreement.

- (c) hiring upwards from eight persons who were not union members contrary to the collective agreement.
- (d) failing to advise the employees so hired of their rights under the collective agreement in order to avoid its obligations to such employees under the collective agreement.
- (e) failure to pay union fees or to contribute to the employer's share of employee benefits to which such employees are entitled under the agreement."

9. Counsel elaborated this theme during the course of his argument with respect to the relevancy of the impugned questions. The argument submitted was that the employer's pattern of conduct during the course of the collective bargaining relationship as evidenced by its continuous violation of the terms of the agreement (and more particularly the union security clause) was calculated to undermine the union by engendering a hostile attitude towards the respondent by employees in the bargaining unit culminating in the preparation of the petition filed herein. For example, it is suggested that the union is discredited in the eyes of the affected employees by virtue of a benefit conferred those employees who are not subject to the union security clause as opposed to those who are required to submit monthly dues deduction. That is to say, the benefit conferred non dues deducting employees is an incentive to apply for termination of bargaining rights and such incentive is a product of the intervener's pattern of conduct towards the respondent in applying, interpreting and administering the collective agreement. In other words, the suggestion is made that the employer's conduct, being subversive of the respondent's bargaining rights, is the prime motive behind the origination of the petition.

10. Counsel for the applicant argued that the employer's course of conduct as alleged is so remote to the issues before the Board in disposing of the instant application so as to be irrelevant. Counsel for the intervener supported these submissions by arguing that in order for the Board to find in favour of the respondent, it would be compelled to intrude on the exclusive jurisdiction of a Board of Arbitration in order to determine whether the employer indeed violated the relevant provisions of the agreement. Furthermore, it was submitted that it does not lie in the mouth of the respondent to suggest that a violation of the agreement occurred where that agreement provides a remedy pursuant to the relevant grievance provisions and ultimately by way of arbitration. In short, counsel appears to go a step further than merely submitting the questions are irrelevant but seems to suggest the Board is precluded by operation of The Labour Relations Act from finding that the employer violated the agreement for the purposes alleged.

11. The Board has considered the argument made by counsel and rules that the questions put by counsel for the respondent are improper and therefore sustains the objection made by counsel for the applicant and the intervener. By operation of The Labour Relations Act parties to the collective bargaining process are required to bargain in good faith and make every reasonable effort to make a collective agreement (S14). Once a collective agreement is entered into not only is the trade union and employer parties bound by the terms thereof but so are the employees defined in the agreement. (S42). Every collective agreement shall contain a recognition clause providing that the trade union party thereto is recognized as the exclusive bargaining agent of employees in the bargaining unit defined therein (S35). Furthermore, every collective agreement shall provide that there will be no strikes or lock-outs so long as the agreement continues to operate (S36). And every collective agreement shall also provide for the final and binding settlement by arbitration, without the stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement...[S37(1)] and failure of such an agreement to contain such a provision, it shall be deemed to contain a provision elaborately set out in the Act. [see S37(2)]. And each collective agreement may include in its provisions a union security clause requiring as a condition of employment membership in the trade union that is a party to or is bound by the agreement or granting a preference of employment to members of the trade union, or requiring payment of dues or contributions to the trade union. [S38(1)(a)].

12. It appears that indeed a union security clause of the type permitted by S38(1)(a) of the Act is contained in the collective agreement negotiated by the intervener and respondent. Furthermore it appears on the face of the agreement that a classification of employee may be exempted from the obligations required pursuant to those provisions. The respondent argues that the intervener's pattern of conduct was to undermine the respondent's bargaining rights through violation of the obligations under the collective agreement. It appears therefore that in order for the respondent to establish its allegations it must satisfy us that; (i) the relevant terms of the collective agreement were violated and (ii) that provisions were violated with the intent to undermine bargaining rights in the manner alleged.

13. We reject the course adopted by the respondent to establish its charges. In the first instance, the Board is not prepared to usurp the function of a Board of Arbitration by entertaining evidence required to satisfy us that the intervener has violated the terms of the collective agreement. Such would not only be an intrusion on the negotiated grievance procedure under that agreement but also would undermine the fixed policy of the Legislature of preserving such determination to the exclusive jurisdiction of Arbitration to settle all differences between the parties arising from the interpretation, application, administration and alleged

violation of the collective agreement. (see; Re: International Nickel Company of Canada Limited and Rivando et al 56 CLLC ¶15,263 (per Aylesworth J.A.) at page 504). We are further fortified in reaching this conclusion in that the trade union has admitted its failure to challenge the employer's treatment of part-time employees affected herein through the processes of review available under the terms of the collective agreement at the appropriate time these employees were hired. Indeed the Board in the past as a matter of policy has deferred to the exclusion jurisdiction of a Board of Arbitration in treating matters that may very well affect the disposition of proceedings before us. (see for example the recent decision in The Imperial Tobacco Limited Case OLRB M.R. July 1974 418 at p. 432 to page 440). Furthermore until the Board is otherwise notified that the intervener has in fact violated the collective agreement by an award from an appropriately seized tribunal, we are constrained to presume, especially in light of an apparent exemption from the union security provisions as contained in the agreement, that the respondent has acted in any way but in accordance with its obligations under the terms of the collective agreement. We therefore must rule that any question put to a witness in these proceedings with a view to establishing a violation of the relevant provisions of the collective agreement for the purposes set out in the respondent's allegations is not proper and therefore will not be permitted.

14. In order that our ruling be not misinterpreted nothing stated herein prejudices the respondent from proceeding with its charges provided the evidence adduced with respect to alleged violations of the agreement are in the form of arbitration awards that indeed establishes that de facto violations of the agreement transpired. (see for example Hamilton Street Railway Company v Northcott 66 CLLC ¶14,151 (SCC) per Judson J. at p. 601). In other words, the issue before the Board is the voluntariness of the statement of desire filed by the applicant in support of its claim for relief. To the extent that evidence relating to the origination, circulation and preparation of the document may cast some light on the issue, such evidence will of course be admitted.

15. We now come to a third issue raised by counsel for the intervener. Counsel addresses himself to the allegation filed in the respondent's letter of November 4, 1974 which reads as follows:

"In or about the month of March 1968, Albert Nightingale, the owner of the employer, called a meeting or gathering of employees on the premises of the Brunswick for the purpose of inducing a termination application and in the course of the discussions of this occasion, Albert Nightingale offered employees additional pay of \$100.00 a week if they signed and supported an application to de-certify the union."

The instant application was filed on October 17, 1974 approximately six years subsequent to the events alleged in the respondent's charges. Counsel for the intervener suggests that any evidence relating to said charges are so remote to the circumstances relating to the instant application so as to be rendered immaterial or irrelevant. Counsel makes this submission in light of the circumstance of Mr. Nightingale's illness incapacitating him from appearing at the hearing to adduce evidence to rebut the allegations. The Board is of the view that such evidence in support of said charges is admissible with respect to the issue of the voluntariness of the statement of desire but subject to the Board attaching to it the appropriate weight having regard to the circumstances set out herein.

16. The proceedings are to continue on the day scheduled by the Registrar.

6735-74-R: United Garment Workers of America (Applicant) v. H.D. LEE COMPANY OF CANADA LIMITED (Respondent) v. Amalgamated Clothing Workers of America (Intervener).

BEFORE: George W. Adams, Vice-Chairman, and Board Members E. Boyer and J.D. Bell.

APPEARANCES AT THE HEARING: Bernard Whyte and Emily Ross for the applicant; Hughes H. Woods for the respondent; Martin Levinson and Robert Blasina for the intervener.

DECISION OF THE BOARD: November 21, 1974.

1. This is an application for certification wherein two trade unions seek, to the exclusion of the other, to represent the employees of the respondent.

2. The Board finds that both the applicant and the intervener are trade unions within the meaning of section 1(1)(n) of The Labour Relations Act.

3. Having regard to the representations of the parties the Board further finds that all employees of the respondent at North Bay, Ontario, save and except foremen, foreladies, persons above the rank of foreman and forelady, office staff and sales staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. Having regard to the membership evidence submitted by both the applicant and the intervener the Board is satisfied that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of each of the

trade unions on November 14, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

5. The applicant did file membership evidence establishing that more than sixty-five per cent of the employees in the bargaining unit as of the terminal date were in its membership; however, in these circumstances, given the presence and membership evidence of the intervener, the Board must exercise its discretion under section 7(2) of the Act and direct that a representation vote be taken.

6. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

7. Having regard to the reasoning found in Wholesale Homes Ltd. [1971] OLRB Rep. p. 818 (Dec.) voters will be given a choice between the applicant, the intervener and no trade union.

8. The matter is referred to the Registrar.

6652-74-R: Canadian Union of Public Employees (Applicant) v. THE CORPORATION OF THE CITY OF BARRIE (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: W.A. Acton, J.R. Anderson and Helen Browne for the applicant; John P. Sanderson and Lorne Knowles for the respondent.

DECISION OF THE BOARD: November 21, 1974.

1. This is an application for certification.

. . .

3. The applicant proposed a bargaining unit described as "all employees of the respondent in the City of Barrie save and except office, clerical and technical employees, persons regularly employed for not more than 24 hours per week, students employed during school vacation periods and persons covered by a subsisting collective agreement". And the respondent contended that the bargaining unit description should read as "all recreation employees of the respondent in the City of Barrie save and except foremen, persons above the rank of foreman, office, clerical and technical employees, persons regularly employed for not more

than 24 hours per week, students employed during the school vacation period, and those persons covered by any existing collective agreement."

4. In other words the applicant took the position that the group of employees subject to its application was appropriate as an all employee tag-end unit in that they were not included under an existing certificate granted to the applicant in relation to the respondent and there are no other employees of the respondent to be organized at this time. The applicant argued that the respondent's proposed description ran counter to the Board's aversion to the fragmentation of bargaining units because such a description would defeat the principle of accretion and force the applicant to make successive tag-end applications in the future in order to extend collective bargaining to new employees.

5. Conversely, the respondent argued that the employees subject to the application were an appropriate unit for collective bargaining without reference to the Board's policy in regard to tag-end bargaining units. Thus to describe them with reference to their classification or departmental location only reflected this appropriateness. And the Board's policy on fragmentation has always been subject to the nature of appropriateness, it was argued.

6. As counsel to the respondent suggested, this contest over the wording of the bargaining unit is a contest over the rights of future employees.

7. The applicant is now certified as the bargaining agent for all employees of the Public Works Department of the respondent, save and except foremen, persons above the rank of foreman, office and technical staff and students employed during the school vacation period; (see Board File No. 3658-73-R).

8. We were informed that at the time of that application these were the only employees available to the trade union to organize. But whether this was the case or not the departmental description of that bargaining unit appears anomalous, and this anomaly is the reason for the present application. Had the description only made reference to "all employees" of the respondent (with the appropriate exclusions), the employees subject to this application would have come under the first certificate granted by the Board when they became employees of the respondent; (see Kohen Box Co. (Windsor) Limited [1966] OLRB Rep. 117 (May); The Metropolitan Toronto Housing Company Limited [1966] OLRB Rep. 186 (June); St. Joseph's General Hospital [1968] OLRB Rep. 558 (Sept.); and John Bertram & Sons Co. Limited, C.C.M. Contract Sales Department [1965] OLRB Rep. 428 (Sept.)). And we say this is an anomalous description because bargaining units consisting of particular classifications or departments are not generally considered by the Board to be appropriate unless, of course, they constitute the extent of the employer's work force and even then the description of the

bargaining unit would not refer to the classification(s) or department(s) but would be in terms of "all employees"; (see Board of Education for the City of Toronto [1965] OLRB Rep. 125 (May); International Harvester Co. of Canada Ltd. [1962] OLRB Rep. 372 (Dec.); and Rainee Manufacturing Products Ltd. [1968] OLRB Rep. 259 (June)). Were the Board to act otherwise, the working force of an employer might become fragmented into a number of bargaining units and this in turn could lead to jurisdictional disputes between bargaining units, more numerous negotiations and, therefore, potentially more industrial conflict. In other words, the Board believes that the undue fragmentation of bargaining units is likely to contribute to industrial stability and therefore it has refused to find such isolated groups of employees as constituting units appropriate for collective bargaining; (see Corp. of The Township of Markham [1969] OLRB Rep. 592; and Tamco Limited, Board File No. 6347-74-R).

9. However, despite this Board policy, counsel to the respondent asked us again to describe the employees subject to this application by reference to their department or job function, arguing that they are an appropriate unit in their own right and not as a tag-end unit. Furthermore, it was argued that to describe the proposed unit as an "all employee" unit would deprive future employees of their choice of trade unions.

10. We cannot accept these arguments and deny the respondent's request. We further find that all employees of the respondent in the City of Barrie, save and except office, clerical and technical employees, persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods and persons covered by a subsisting collective agreement, constitute a unit of employees of the respondent appropriate for collective bargaining.

11. The Board will not presume that any future job classifications and departments, which the respondent may decide to create, will lack a sufficient community of interest with the employees subject to this application to be included in a common bargaining unit. Such a presumption could lead to the complete fragmentation of an employer's work force accompanied by all of the implications referred to above.

12. With reference to the respondent's concern for the freedom of choice of its future employees, we would note that these employees might be deprived of any collective bargaining unless they existed in sufficient numbers to make their organization meaningful. Furthermore, a new employee need not be burdened with an existing trade union in that having notice of the trade union's presence he or she can refrain from accepting the employer's job offer. This observation was made by the majority in St. Joseph's General Hospital (supra) when it wrote:

"It is important to bear in mind that entirely different considerations are

applicable when a bargaining unit is described in terms of "all employees" as opposed to specific occupational classifications. In the former case employees employed in newly created occupational classifications or a new department of an employer's operations automatically fall into the bargaining unit by virtue of the all encompassing scope of the unit. This is not arbitrary as new employees being hired in these new classifications or in a new department are aware that upon accepting employment with the employer they immediately become members of the unit. The same of course holds true for employees hired in occupational classifications that were in existence at the time the trade union acquired the bargaining rights for an "all employee" unit. Moreover, at the time the union initially acquired the bargaining rights for an "all employee" unit, whether by certification or voluntary recognition, the employees then in the employ of the employer had the opportunity to express their opposition to the union in the case of certification or to challenge the right of the union to represent them in the case of voluntary recognition."

. . .

6542-74-R: The Toronto Motion Picture Projectionists Union Local #173 International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. T W C TELEVISION LIMITED (Respondent) v. Gunnar Domander (Employee).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: A. Pat Traver, Robert P. Curry and Graydon Hulse for the applicant; Donald J. McKillop, Q.C., and George Dick for the respondent; Robin B. Cumine and Gunnar Domander for the employee.

DECISION OF THE BOARD: November 25, 1974.

. . .

2. The applicant has applied to the Ontario Labour Relations Board under section 55 of the Act with respect to the alleged bargaining rights of the Toronto Motion Picture Projectionists Union Local #173 International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada as the result of a sale said to have occurred between Trans-World Communications, A Division of Columbia Pictures to T W C Television Company Limited, the respondent herein.

3. An employee of the respondent, Gunnar Domander, (hereinafter called the "employee") filed notice of desire to make representations pursuant to section 19d of the Board's Rules of Procedure. The said Gunnar Domander is hereby added as a party in these proceedings.

4. The employee submitted that the applicant has not previously held bargaining rights for the employees of the respondent or of any predecessor of the respondent.

5. There was filed with the Board what purports to be a collective agreement between Trans-World Communications, a division of Columbia Pictures Industries, Inc., as employer, and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO (hereinafter referred to as the "international"). The respondent submitted that the document in question does not constitute a collective agreement within the meaning of The Labour Relations Act.

6. It is quite clear that the bargaining agent recognized in the agreement is the international and not the applicant herein. The evidence was that the bargaining which led to the signing of the agreement was done by the international.

7. The Board, in granting bargaining rights, has always distinguished as separate entities international unions and their respective locals. In The Corporation of the Town of Markham case, [1972] OLRB Rep. June 616, the Board, in dealing with the question of bargaining rights between a local and its parent union, stated as follows:

4. Fundamental to an understanding of the problem faced by the respondents is a grasp of the well established distinction made by the Board between a parent union and one of its locals. As was set out in paragraph 24 of the Board's decision dated January 10, 1972, the Board has consistently dealt with a local union and its parent organization as two separate entities. It is also to be understood that it is well established that the Board considers membership in a local to include

membership in the parent but does not consider membership in the parent as being membership in the local. It follows that each may independently be certified as a bargaining agent in their own right with all that that implies under the Act.

8. There is, of course, machinery under the Act for the transfer of bargaining rights either way. There is no suggestion here, however, that the international has transferred its bargaining rights as they appear under the agreement to the applicant local. On the facts before the Board, the applicant is not the bargaining agent for the employees covered by the agreement and, consequently, is not in a position to obtain the relief it seeks in the present application. In making this finding, the Board has taken into account the assurances of representatives for the applicant and the international that there is close cooperation between the applicant and the international with respect to all matters concerned with the administration of the agreement on a day-to-day basis. It was not, as we have already noted, in any way suggested, however, that the cooperation affected any bargaining rights that the international might have with respect to the employees of the respondent.

9. In light of all of the foregoing, the application is dismissed but without prejudice to any right the appropriate bargaining agent may have to bring a similar application.

6726-74-M: United Steelworkers of America (Applicant) v. SELCO MINING CORPORATION LIMITED (Respondent).

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman, and Board Members J.D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: Lorne Ingle and Don Posnick for the applicant; Peter Atkinson for the respondent.

DECISION OF THE BOARD: November 26, 1974.

1. This is an application for right of access under the provisions of section 10 of the Labour Relations Act.

2. The evidence discloses that there are approximately 40 employees of the respondent who reside and work in a remote location approximately 35 miles North East of Ear Lake. The employees reside in bunk houses or in trailer homes located near to the mining site where the employees of the respondent perform various jobs associated with a mining operation. The employees work on a rotating shift basis.

3. Having regard to all of the evidence and the representations made by the parties, the Board directs that the respondent allow either George Podtepa, O.E. Sharpe or D. Gustin, representatives of the applicant, access to the property controlled by the respondent and at which certain of the respondent's employees reside for the purpose of attempting to persuade such employees to join the applicant trade union in accordance with the provisions of section 10 of the Act.

4. The Board directs that access be provided to the above-named representatives from and including Wednesday, December 4, 1974, from 11:00 a.m. to 11:00 p.m. and each day thereafter at the same times up to and including Tuesday, December 10, 1974.

6724-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. STANDARD MACHINE & EQUIPMENT INCORPORATED (Respondent) v. United Cement, Lime and Gypsum Workers International Union (Intervener #1) v. United Cement, Lime and Gypsum Workers International Union, Local 424 (Intervener #2).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members O. Hodges and W. H. Wightman.

APPEARANCES AT THE HEARING: A. M. Minsky, H. A. Herron and P. A. Gauthier for the applicant; no one appearing for the respondent; Paul Cavalluzzo, Lorne King, and Eric Batten for Intervener #1 and Intervener #2.

DECISION OF THE BOARD: November 26, 1974.

. . .

4. The United Cement, Lime and Gypsum Workers International Union (hereinafter referred to as the "International") intervened in this proceeding and stated that the Board had issued a certificate to it on May 15, 1974 with respect to a bargaining unit of "all employees of Standard Machine & Equipment Co. & Associates in the Township of Thurlow, save and except foremen, persons above the rank of foreman, office staff and store clerks".

5. The United Cement, Lime and Gypsum Workers International Union, Local 424 (hereinafter referred to as "Local 424") also intervened in this proceeding, claimed that it is a party to a collective agreement with the respondent in this application and that such agreement covers all employees of the respondent including the employees affected by this application.

6. The respondent did not file any material with respect to this application and did not appear at the hearing. The applicant disputed that the employees who are affected by this application are covered by

either the certificate granted by the Board to the International or the alleged collective agreement signed by Local 424. In addition, the applicant challenged Local 424 and the respondent to prove the alleged collective agreement, which, as interpreted by the applicant, was secured as a result of voluntary recognition afforded to Local 424 by the respondent. The applicant further argued that since the alleged collective agreement has been in operation for less than one year, the onus of establishing that Local 424 was entitled to represent the employees in the bargaining unit rested with the parties to the alleged collective agreement. The applicant relied on section 52 of The Labour Relations Act.

7. Local 424 conceded that its alleged collective agreement was secured as a result of voluntary recognition and claimed that section 52 of The Labour Relations Act ought not to come into play because it was "discretionary". In support of the concept of "discretionary" Local 424 argued the purpose of section 52. There was nothing in the arguments advanced by Local 424 which in any way established that section 52 of The Labour Relations Act is not applicable to the circumstances of this application.

8. The Board considered the representations of the parties and ruled that initially the onus was on the International to establish that it had the status to intervene in this proceeding. The Board further ruled that the onus was on Local 424 to establish that it had status to intervene in this proceeding. The Board noted that the applicant had challenged the alleged collective agreement and that having regard to the provisions of section 52 of The Labour Relations Act, the onus was on the parties to the alleged collective agreement to establish that Local 424, at the time the agreement was entered into was entitled to represent the employees in the bargaining unit. The interveners requested an adjournment of the hearing and the Board ruled, after entertaining the representations of the parties, that the interveners had received notice of issues raised in this proceeding and that the request for an adjournment was denied.

9. After the rulings referred to in paragraph eight herein, the International requested leave to withdraw its intervention. Having regard to the representations of the parties, the Board permitted the International to withdraw its intervention.

10. There was no evidence before the Board to indicate that Standard Machine & Equipment Co. & Associates and the respondent were not separate legal entities.

11. Local 424 produced evidence before the Board in order to attempt to satisfy the provisions of section 52 of The Labour Relations Act. The evidence adduced before the Board established that the alleged collective agreement between the respondent and Local 424 was executed during September 1974 and that at that time the employees in the bargaining were not

members of Local 424 but were members of the International. There was no evidence before the Board that membership in the International was also membership in Local 424. In addition, there was no satisfactory evidence before the Board that a majority of employees in the bargaining unit at the time the alleged collective agreement was signed were even members of the International. Reference is made to the Spring Plastering Limited case, OLRB M.R. Dec. 1967, p. 887.

12. In the result, Local 424 has not established that it was entitled to represent the employees in the defined bargaining unit at the time the alleged collective agreement was entered into. Accordingly, the Board declares pursuant to section 52(1) of The Labour Relations Act that Local 424 was not, at the time the alleged collective agreement between it and the respondent, entitled to represent the employees in the bargaining unit. Having regard to the provisions of section 52(4) of The Labour Relations Act, Local 424 forthwith ceases to represent the employees in the defined bargaining unit in the alleged collective agreement and such alleged collective agreement ceases to operate forthwith.

13. The Board therefore finds that the alleged collective agreement between the respondent and Local 424 is not a bar to this application for certification. The Board further finds that all employees of the respondent in Prince Edward County and the Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the Townships of Percy and Cramahe and all lands east thereof in the United Counties of Northumberland and Durham, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

15. A certificate will issue to the applicant.

6283-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. KORLIN LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and W. H. Wightman.

APPEARANCES AT THE HEARING: H. Carl Anderson and Albert Seymour for the applicant; James E. Adamson and John C. Campbell for the respondent; Donald G. Simmons and Donald A. Brown for the objectors.

DECISION OF RORY F. EGAN, ALTERNATE CHAIRMAN, AND BOARD MEMBER W. H. WIGHTMAN:
November 26, 1974.

1. This is an application for certification in which a statement of objections for petition was filed in opposition to the application.
2. The applicant submitted that the Board should give no weight to the petition on the grounds that the company had interfered in the matter. The particulars upon which the applicant relies are as follows:

- 1) On or about Monday, September 9, 1973, the Company posted a memo on the plant bulletin boards in the same location where Form 5 of the Ontario Labour Relations Board had been posted referring to a statement of desire of certain employees.
- 2) This memo (facsimile enclosed) gave certain information as to what the petitioners were required to do in order to make the statement of desire successful.

3. The applicant submitted that because of the interference by the company the true wishes of the employees would not likely be disclosed by a representation vote. The applicant relied upon section 7(4) of the Act which provides:

"If the Board is satisfied that more than 50 per cent of the employees in the bargaining unit are members of the trade union and that the true wishes of the employees are not likely to be disclosed by a representation vote, the Board may certify the trade union as bargaining agent without taking a representation vote.
R.S.O. 1970, c. 232, s. 7."

4. The application for certification was filed on August 21st, 1974. On August 23rd, the Board forwarded to the respondent, inter alia, ten copies of Form 5 for posting on the premises of the respondent. Form 5 generally referred to as "the green form", is entitled "Notice to Employees of Application for Certification and of Hearing." Paragraph 4 of Form 5 reads:

"Any employee or group of employees affected by the application and desiring to make representations to the Board in opposition to this application must send to the Board a statement in writing of such desire . . ."

Paragraph 6 of Form 5 stated that a statement of desire that does not comply with paragraph 4 and 5 will not be accepted by the Board. Paragraph 5 is not relevant to the issue. Paragraph 7 of Form 5 reads as follows:

"Any employee, or group of employees, who has informed the Board in writing of his or their desire in accordance with paragraph 4 and 5 may attend and be heard at the hearing in person or by a representative. Any employee or representative who appears at the hearing will be required to testify, or produce a witness or witnesses who will be able to testify from his or their personal knowledge and observation, as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained.

THE BOARD MAY DISPOSE OF THE APPLICATION
WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF
ANY PERSON WHO FAILS TO ATTEND.*

*EXPLANATORY NOTE: Where employees fail to attend in person or by a representative or to testify or produce witnesses to testify as provided in paragraph 7 above, the Board normally does not accept the statement of desire as casting doubt on the evidence of membership filed by the applicant.

5. Subsequent to the posting of Form 5, the petition dated August 31st, 1974, was prepared and mailed to the Board. It was received on September 3rd, 1974. The Board then sent a copy of the petition with the names deleted, except that of Donald G. Simmons who filed the petition, to the applicant and to the respondent on September 3rd, 1974.

6. The opening sentence of the petition states that it is in reply to the notice of application. The second paragraph of the petition reads: "In compliance with paragraph 4 of that notice, we the undersigned employees of Korlin Limited wish recognition by the Board of opposition to such representation."

7. It is to be noted that the third paragraph of the text of the petition states: "However unfortunate to our situation we will be unable to be represented at the Board hearing this September 13th."

8. On Monday, September 9th, 1974, the respondent posted on the plant bulletin board the following memorandum to employees:

"M E M O R A N D U M T O E M P L O Y E E S

Re: Notice to employees of application for certification before the
Ontario Labour Relations Board

Between: International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, (UAW) Applicant

- and -

Korlin Limited

Respondent

We have been notified by the Ontario Labour Relations Board of its receipt of a written petition in opposition to the union's application by sixteen of our employees. The names of such employees are confidential and are not disclosed to us by the Ontario Labour Relations Board.

We wish to draw your attention to the following provisions of the notice to employees which was posted with respect to the above application.

THE BOARD MAY DISPOSE OF THE APPLICATION
WITHOUT FURTHER NOTICE AND WITHOUT
CONSIDERING THIS STATEMENT OF DESIRE OF
ANY PERSON WHO FAILS TO ATTEND.

We understand that this means where employees fail to attend in person to testify or produce witnesses to testify the Board does not accept a written petition as casting doubt on evidence of membership filed by the Applicant.

We also draw your attention to Rule 48(5) of the Rules of Procedure of the Ontario Labour Relations Board which provides:

"THE BOARD MAY DISPOSE OF THE APPLICATION
WITHOUT CONSIDERING THE STATEMENT OF DESIRE
OF ANY EMPLOYEE WHO FAILS TO APPEAR IN PERSON
OR BY A REPRESENTATIVE AND ADDUCE EVIDENCE
THAT INCLUDES TESTIMONY IN THE PERSONAL
KNOWLEDGE AND OBSERVATION OF THE WITNESS AS
TO,

- (a) THE CIRCUMSTANCES CONCERNING THE
ORIGINATION OF THE STATEMENT OF
DESIRE: AND
- (b) THE MANNER IN WHICH EACH SIGNATURE
ON THE STATEMENT OF DESIRE WAS
OBTAINED."

The Ontario Labour Relations Board has ruled that each signature on a petition by employees objecting to a union's application for certification (referred to by number to prevent disclosure of the names) must be identified by a person who saw, or was present, at the signing; where a signature is not so identified, it may be discounted and, if only a small portion is identified, the petition may be only given a minor consideration.

This memorandum is provided for your information as to the requirements of the Ontario Labour Relations Board in order that your petition may be considered at the hearing on September 13, 1974, at 9:30 a.m., EDT, 6th floor, 400 University Avenue, Toronto, Ontario.

KORLIN LIMITED."

9. The inescapable inference to be drawn from the memorandum is that its preparation was prompted by the statement in the petition indicating that the petitioners would not be represented at the Board hearing on September 13th.

10. The petition bears the signatures of 16 of the employees of the respondent. Three of the persons who signed the petition had also signed applications for membership in the applicant union. This overlap made it necessary for the Board to inquire into the origination of the petition and the manner in which the signatures were obtained thereto.

11. The evidence is quite clear that the idea of filing a statement of objection arose out of the Board's notice to the applicant. This is indicated in the text of the petition and was verified by Donald G. Simmons who testified on behalf of the petitioners.

12. The latter testified that there were a lot of copies of Form 5 around the plant and that he had obtained one from a number lying on the desk in the foreman's office. He testified that the office was normally opened to employees. Other copies of the notice to employees had been posted in the plant as required by the Board.

13. Simmons testified that he had talked to the foreman Weir on the evening the petition was drafted but stated that Weir was not in the office at the time he obtained a copy of the notice. The precise nature of the conversation with the foreman was not developed in cross-examination but the witness stated quite emphatically that the matter of the petition was not discussed with anyone in management. He insisted that it had its origin in Form 5 which, the witness said, stated that the Board "required an opposition." The witness testified that there was another management person in the plant that evening but there was no suggestion that he had talked to Simmons. The signatures to the petition were obtained in the locker room and the lunch room in off-shift hours.

14. Having regard to all of the evidence with respect to the origination of the petition and the manner in which the signatures were obtained the Board finds that the petition expresses the voluntary wishes of the signatories. The Board therefore finds that the petition casts sufficient doubt upon the evidence of membership filed by the applicant to require a holding of a representation vote in normal circumstances.

15. There remains, however, the question raised by the applicant as to whether the memorandum posted by the company after the filing of the petition to the Board makes it unlikely that the true wishes of the employees would be disclosed in a representation vote.

16. It is obvious, of course, that the memorandum cannot be said to affect the voluntariness of the petition which had already been signed before the memorandum was prepared. (See Minit Car Wash Ltd. OLRB M.R. January 1960, p. 361.) The chief concern of the applicant has to do with the possible adverse effect of the memorandum upon the ability of the employees of the respondent to freely express their opinion in a representation vote.

17. The respondent took the position that it was free to express its views, so long as it refrained from coercion, intimidation, threats, promises or undue influence and pointed to the provisions of section 56 of the Act which provides:

"No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence.
R.S.O. 1970, c. 232, s.56."

18. The Board has said that it is not necessary for the application of section 7(4) that the respondent commit an unfair labour practice by violating some other section of the Act. The Board has also said that in fact the mere commission of an unfair labour practice would not justify the Board in finding that such commission, per se, precluded an expression of the true wishes of employees. The issuance of a certificate, it added, cannot be viewed as a penalty to be imposed as a violation of the Act. It must be a question of fact in each case as to whether the particular circumstances of the individual case are such as to have a reasonable tendency towards a coercive effect on employees (even if not so intended) so as to create a likelihood of interfering with the exercise of their rights. (See Underwood Manufacturing Company 52 C.L.L.C. paragraph 17,040.)

19. In the present case, as we have already stated, there can be no doubt that the respondent's action was taken with the hope of ensuring that the petitioners would appear at the Board in support of the petition. The respondent's action directly or indirectly brought about the desired result. The question as to whether that action in itself constituted a departure from the saving provisions of section 56 was not raised as an issue before the Board (however, see Minit Car Wash case cited above).

20. The Board, in the present instance, is therefore not directly concerned with the question as to whether Simmons or any other employee was improperly persuaded directly, or indirectly, by the memorandum to appear before the Board in support of the petition. The vital question before the Board has to do with the applicability of section 7(4) and as to whether the conduct of the respondent in posting the memorandum embodies elements which would render it unlikely that the true wishes of the employees would be disclosed by a representation vote.

21. The memorandum adheres for the most part to the information directed by the Board to persons wishing to object to the application for certification. The respondent embellished the information provided by the Board with additional comments concerning what it conceives to be the practice of the Board with respect to statements of objections. The memorandum without the comments does little more than repeat to the employees what the Board itself had already stated. There is nothing in the added comments which may reasonably be construed as constituting coercion, intimidation, threats, promises or undue influence, so as to make it unlikely that the true wishes of employees are not likely to be disclosed by a representation vote. The Board therefore is not satisfied that the situation is such as to cause it to certify the trade union applicant without taking a representation vote.

22. The Board finds that all employees of the respondent in Stratford, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

23. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on September 3, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

24. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in

the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

25. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

26. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER OLIVER HODGES: November 26, 1974.

1. The majority of this panel consider the petition filed with the Board in this case proper, and the activity of the employer in posting the "Memorandum" insufficient grounds for application of section 7(4) of the Act. I disagree with my colleagues on each count.

2. Sixty-five employees are eligible to vote in this matter. Forty-three membership cards were filed by the trade union, a number just sufficient for certification without a vote, i.e. more than 65 per cent. Of the 16 employees who signed the petition in opposition, 14 names correspond to the names on the list of employees and of these 3 had also signed upon membership cards. This overlap of 3 reduced the count of the union membership to below 65 per cent. In case of a proper, unchallenged petition, where no argument with regard to section 7(4) is raised, the Board has no alternative but to order a vote in these circumstances.

3. To deal first with the validity of the petition, I cannot accept the testimony-in-chief of the petitioner Donald G. Simmons to the effect that the origin of the petition was entirely free from the hand of management. Under cross-examination by counsel for the union, Mr. Simmons indicated that he had talked with foreman John Weir the night the petition was drafted and that Mr. Weir was around the office. When asked whether he met another management official, a Mr. Sweet, in the foreman's office, Mr. Simmons replied that "it wasn't a meeting." He testified that Mr. Weir was not there when he picked up a copy of Form 5, the Board Notice, from the foreman's desk. Mr. Weir testified that that night he collected ideas during the shift from 7 p.m. to 7 a.m., discussed conditions in the plant during breaks, and wrote the petition in the plant lunch room after the shift. Mr. Simmons was not questioned in reply to the cross-examination.

4. It is also interesting to note a curious misinterpretation that was apparent in the evidence-in-chief of Mr. Simmons, when he said that the Board Notice posted on August 26 stated that the application for certification "required an opposition". It has been stated in the case of Canada Dry Bottling Company (Kirkland Lake) Limited, O.L.R.B.

Monthly Report, July 1962, p. 140 that "the Notice to Employees of Application for Certification (Form 5) cannot reasonably be misinterpreted by employees".

5. In drawing conclusions from indirect evidence of the kind set out above, the following statements by the Board in the Wolverine Tube case, 63 CLLC para. 16,296, must always be kept in mind:

"...It is, of course, a trite principle in the law of evidence that no party is bound to prove all of his case by direct evidence. Reasonable and necessary inferences may and must be drawn from all the evidence adduced and that which is clearly inferable from the evidence is as much proved as if it had been established by direct evidence. Indeed, in reaching a decision as to whether or not employees have or have not been influenced by improper conduct on the part of a union or employer, the Board has often been constrained to view the objective facts and overt acts of the parties with the reasonable inferences to be gathered from them, as more persuasive evidence of the true facts than the subjective assertions and counter-assertions of employees, given in the presence of the union or employer, that they were or were not influenced, or in what way, by the conduct in question. Needless to say, it is hardly possible for the Board to base its decision in such matters on the certainty of mathematical evidence. The most that can generally be expected is, and of course, the rule of evidence requires, that the Board will make its findings of fact, in such cases as this, on what is the more probable conclusion in the circumstances."

6. Applying this rule to the evidence in this case, I would find that the "reasonable and necessary inferences" are that Mr. Weir or Mr. Sweet or both of them were responsible for the origin of the idea that led to the petition activity of Mr. Simmons. On this ground I would dismiss the petition and certify the applicant.

7. Even if the evidence of the petitioners is accepted, it would still be open to the Board to certify the union without a vote under section 7(4) on the grounds that the effect of the respondent's "Memorandum of Employees", which was posted subsequent to the filing of the petition, has been such as guarantee "that the true wishes of the employees are not likely to be disclosed by a representation vote".

8. In this case, as in the Peel Block Company Ltd. case, 63 CLLC para. 16,277, the

"..question of the union's organizational campaign and of its application for certification would have been matters of constant interest and active discussion among the employees. Also they would naturally have been acutely perceptive to detect and be influenced by any interest or participation shown by their employer in these matters."

By intervening in the handling of the petition by way of its "Memorandum" the respondent clearly demonstrated to these "acutely perceptive" employees support for the petitioners in their opposition to the union. In my opinion this is interference with the formation of a trade union and participation in the matter of representation of employees by a trade union, both unfair practices within the meaning of section 56 of the Act.

9. The destructive impact that any such demonstrations of employer support may have on the freedom of choice of employees is well set out in the following passage from Pigott Motors (1961) Ltd., 63 CLLC para. 16,264:

"There are certain facts of labour-management relations which this Board has, as a result of its experience in such matters, been compelled to take cognizance...In view of the responsive nature of his relationship with his employer, and of his natural desire to want to appear to identify himself with the interests and wishes of his employer, an employee is obviously peculiarly vulnerable to influences, obvious or devious, which may operate to impair or destroy the free exercise of his rights under the Act."

More specifically, the Board in Sapawe Gold Mines Limited, O L.R.B. Monthly Report, December 1964, p. 451, had to deal with a situation very similar to that in the present case. In the Sapawe decision it was indicated that a manager of the respondent named A.F. Heather had posted alongside Board Form 5 a notice that read as follows:

"Section 50 of the Rules of Procedure and Regulations The [sic] Ontario Labour Relations Act Indicates
Statement that the Employees do not wish to be represented by a trade union--

Must be made in writing, signed by the Employee, or each member of a Group of Employees, and must be in the hands of the Ontario Labour Relations Board not later than the Terminal Date for the Application."

Although the Board did not find it strictly necessary to rule on this conduct because there were in that case other grounds for finding that the petition in question was not a voluntary expression of the wishes of the employees, the Board found it necessary to indicate that:

"...although we are not prepared to find that Heather's conduct in posting the document (referred to in paragraph 9) beside Form 5, in itself amounts to management support for the petition, in our view, it was a dangerous course of conduct by the respondent which may well, depending on circumstances, be considered management provocation to employees to instigate or support a petition."

10. In this case the respondent's notice would clearly seem to have acted as "provocation to employees to...support a petition". The third paragraph of the petition heading, which states that "However unfortunate to our situation we will be unable to be represented at the Board Hearing this September 13", makes it clear that the organizer of the petition and those who signed the document understood the importance of their intended absence from the Board hearing. What then induced the subsequent attendance of the petitioner at the hearing? The answer may be found in the last paragraph of the "Memorandum to Employees" which states that "This memorandum is provided for your information as to the requirements of the Ontario Labour Relations Board in order that your petition may be considered at the hearing..." (Emphasis added). In view of this demonstrable influence of the "Memorandum" on the petitioners it would be surprising if it had not also influenced the employees in general. A subsequent vote would reflect that influence.

11. The law relating to the onus lying upon the applicant for relief under section 7(4) is well set out in the Board's decision in the Paragon Tools case, O.L.R.B. Monthly Report, December 1969, p. 1051, as follows:

"...The whole tenor of this section of the Act is to provide for the determination of the wishes of the employees and not those of either a union or their employer. In a normal situation where there is doubt as to the wishes

of the employees, a representation vote may be the right way to determine such matters but where, as in the present case, undue influence is alleged, subject to the onus of proving such influence by substantial, compelling evidence, the Board may exercise its discretion in accordance with the intent of the legislature in this regard. The onus on the party invoking this section does not have to be satisfied by absolute proof of all matters; reasonable and proper inferences can and must be drawn from the evidence put before the Board. Where such evidence supports the charges then the Board cannot ignore the provisions of section 7(5) [now section 7(4)] to the detriment of the majority who have already freely indicated their desire. Furthermore, it is not enough to argue that if the union still enjoys a majority support then a vote will not hurt them but only confirm their stand, the whole thrust of this section is premised on the finding that a vote in all the circumstances will not disclose the true wishes of the employees because of the other factors aforementioned."

12. The Board is obliged to do more than merely balance the interest of the employer and a minority of employees who are satisfied with a paternal industrial relationship. The purpose of the Act as set out in the preamble is "to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees", and this purpose requires the Board to come down solidly on the side of the applicant trade union in considering the evidence of membership existing at the time the application for certification was made. In my opinion there is clear inferential evidence of the kind generally acceptable to the Board that a representation vote would not indicate the true wishes of the employees in the circumstances of this case, and that the result of the posting of the "Memorandum" will be to influence and intimidate employees and thereby deny them a free exercise of judgment and choice in a representation vote for or against the applicant union. I therefore find that the applicant is entitled to certification without a vote.

6499-74-M: N. Terence Black (Applicant) v. Toronto Typographical Union No. 91 (Respondent Trade Union) v. COMPUTER TYPESETTING OF CANADA (Respondent Employer).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: Gerald Vandezande for the applicant; James Buller and Balfour MacKenzie for the respondent trade union; no one for the respondent employer.

DECISION OF THE BOARD: November 28, 1974.

1. This is an application by Neil Terence Black under section 39(2)(a) of The Labour Relations Act for exemption on the grounds of religious conviction or belief from the union security provisions in a collective agreement entered into by the trade union and the respondent employer.

2. Section 39 of the Act provides:

39. - (1) Where the Board is satisfied that an employee because of his religious conviction or belief,

(a) objects to joining a trade union; or

(b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type mentioned in clause a of subsection 1 of section 38 do not apply to such employee and that the employee is not required to join the trade union, to be or continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, provided that amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are remitted by the employer to a charitable organization mutually agreed upon by the employee and the trade union, but if the employee and the trade union fail to so agree then to such charitable organization registered as a charitable organization in Canada under Part I of the Income Tax Act (Canada) as may be designated by the Board.

(2) Subsection 1 applies,

- (a) subject to clause b, to employees in the employ of an employer at the time a collective agreement containing a provision of the kind mentioned in subsection 1 is first entered into with that employer and only during the life of such collective agreement; and
- (b) where a collective agreement in force before the 15th day of February, 1971 contains the provision mentioned in subsection 1, to employees in the employ of the employer on the 15th day of February 1971 and only during the life of such collective agreement,

and does not apply to employees whose employment commences after the entering into of the collective agreement when clause a applies, or on or after the 15th day of February 1971, when clause b applies.

3. There is no dispute that the collective agreement is a first agreement with a term running from August 20, 1974 to March 31, 1977. Section 39(2)(a) of the Act is therefore relevant in the circumstances.

4. The applicant commenced to work for the employer on February 18, 1974. At that time there was no trade union representing the employees of the employer.

5. The applicant testified that some two weeks after he commenced work he was contacted by someone from the union and asked if he would be interested. He said that he replied that he would not be interested--that he would not join the union--that he did not like the union and was not interested in discussing the matter.

6. Some time after the collective agreement was signed, the applicant was asked by Mr. Buller, an officer of the union, to come into the union office to talk about the matter of joining the union. The applicant was asked to fill out an application for membership card but did not do so. He asked to see a copy of the collective agreement. There were no copies of the agreement in final form available at the time. The witness told Mr. Buller that he would read the agreement if the latter would send him a copy in its final form. He testified that he had not received a copy of the agreement. He did, however, receive some pamphlets dealing with welfare matters and a copy of the constitution of the union. This

happened about September 10, 1974. The applicant has read the constitution.

7. Before the union was certified, the applicant was approached by a fellow employee, Heather Dean, concerning the union. The applicant stated that he told her he was not interested in joining the union. He said they discussed the union in June but he did not feel it was necessary to go into details because the union was not in the plant at the time. The applicant said that Heather Dean mentioned to him that he might apply for exemption under section 39 of the Act. In her testimony Heather Dean stated that she discussed the union with the applicant for over half an hour. She said the conversation was about labour disputes, high salaries of union officers and the applicant's view that unions were going to sink Britain. She said they did not discuss religious objections. She testified, however, that she suggested to the applicant that he might use the religious objection section of the Act as a means of avoiding union membership. She also said that the applicant told her that he would quit his job rather than join the union.

8. Asked if he had spoken to anyone else, the applicant replied that after certification he had discussed the union with Derek Brockie, a fellow employee, who is also related to one of the owners of the respondent employer. The applicant stated that he told Brockie that he was not interested in the union. It was from Brockie that he learned that the union had been certified.

9. The applicant is an Anglican. He teaches Sunday school and is a member of the Advisory Board. He attends church regularly and supports it financially. He contributes \$200 a year towards a mission which sends Bibles to India. The applicant designed an advertisement and wrote the text for it related to a Grand Prix of Canada automobile race. The ad was published in the Mosport Competition Magazine. The title is "The Perfect Race" and the text reads as follows:

Walk around the track alone at
2 m.p.h. Walk through the corners.
They straighten out easily enough.
Quicken the pace 100 times, though,
and perfection becomes elusive.

But Drivers try. That long reach
for perfection is what it's all about.

Meanwhile, back in the everyday rat
race some people--not many, but some--
strive for perfection. Nikon, Benz,
some come close, Only Jesus Christ made
the grade, though. He ran a perfect

race and people found they couldn't stand themselves confronted with His perfection. A few dealt with their condition; wanting that perfection so much they followed Him.

The rest executed Him.

The good news is that He was raised from the dead and given a new life. He was a perfect sufficient sacrifice for our sins. Believe in Him and that new life is yours. Free! And read an old best seller for the whole story about a likeable man who ran the perfect race...for you.

Write for a copy of that old best seller (no cost, no strings) care of:

Free Best Seller,
P.O. Box 6997
Stn. "A"
Toronto, Ontario,
M5W 1X7, Canada

10. The applicant contributed \$500 for the first publication of this advertisement. The second issue has been published on which there is owing \$1,100.

11. The witness testified that he objects to joining the trade union because he is a Christian and the Bible is the basis for running his life. He stated that the union constitution implies that his working time is not related to his Christian life and that the constitution nowhere refers to being biblically based.

12. He further objects because some union actions are based upon majority votes. He stated that he cannot go along with that because that is not the way he orders his life. He stated that he and the union start from a different touch point or starting point. He testified that at the age of twelve he accepted the claim of Jesus to forgive him for all the things he had done wrong and that he committed the rest of his life to Jesus as outlined in the Bible. The applicant said that the majority vote idea interfered with God's authority to deal with every aspect of life. Rule by the majority is further unacceptable to him because it is neutral insofar as religion is concerned. He said that he could not be neutral because "you have to be for God".

13. To the union's contention that it observed the golden rule, the applicant replied that the rule does not mean much unless it is related to the Christian faith. He added that if the union adhered to the golden

rule to do unto others as you would have them do unto you, it would not conduct its bargaining in the manner in which it does. He stated that he does not want the union to bargain for him. His contention is that in collective bargaining the individual is denied his rights. He is robbed of his independence which is contrary to the Bible.

14. The applicant objected to being required to adhere to the constitution of the union when his whole life is based upon the Bible which is the word of God. He feels he should be free to follow God and to work or not to work as he, the applicant, sees fit. The witness agreed with the union's suggestion that its action in obtaining welfare benefits is charitable but he objected that the action was not taken in the name of the Lord and was, therefore, according to his beliefs, against the Lord.

15. In cross-examination, the attention of the applicant was directed to Article 3, Section 7 of the union By-laws. The article requires a member-elect to take the following obligation:

"I (give name) hereby swear (or affirm) that I will, in good conscience, and to the best of my ability, comply with and perform the Duties of Membership of the International Typographical Union, all of which shall in no way interfere with any duty I owe to God or my country."

16. The applicant was asked--in view of the concluding phrase of the article--what objections he could possibly have to the union and its constitution. He replied that it did not satisfy him since the entire constitution has no biblical reference. He also took exception to the constitution because it provides that regular meetings of the union are to take place on the last Sunday of each month. He felt that this was a violation of the sanctity of Sunday.

17. In applications for relief under section 39, the Board has to deal with matters that are very subjective and which have to be decided not upon the reasonableness of the applicant's beliefs but rather upon the question as to whether the applicant, in fact, holds the beliefs and is, in fact, bound by convictions as he alleges. It is not, however, sufficient for an applicant to simply state that he holds religious beliefs or is bound by religious convictions in order to obtain the relief provided by the section. The Board must be presented with such evidence as leads it to the conclusion that the objection is sincere, genuine and truly motivated by beliefs and convictions binding upon the conscience of the applicant. That is, if it may be said with propriety, not every one who says "Lord, Lord" is necessarily exempt. The matter,

as already stated, is a difficult one in which, of necessity, the Board must depend to a great extent upon the manner in which the testimony is given and the demeanour of the applicant in the witness stand. As it has done in the present instance, the Board looks for evidence of the religious life and practices of the applicant, quite apart from the question of trade unions, as a guide in the assessment of the sincerity of the applicant.

18. There can be no doubt that the applicant in the present case is a man whose life and conscience are guided by religious beliefs which are translated into actions that accord with and promote those beliefs. The evidence, however, raises grave doubts as to whether those convictions and beliefs, deep and sincere as they are, form the true basis for the applicant's objection to joining the trade union. There is no conflict whatever in the evidence given by the applicant and the witnesses for the union that the applicant did not initially raise any objections to the union because of his religious beliefs or convictions. The applicant himself stated that he had said he was not interested but that he did not go into details when the union commenced its activities. It has already been observed that the witness Heather Dean said that she was the one who suggested to the applicant that if he did not want to join the union he could take advantage of section 39. Up to the time that Dean made the suggestion, the applicant, on his own admission, had not mentioned to anyone his religious convictions and beliefs as being the reason for his objection to joining the trade union. Indeed, according to the evidence reviewed above, his initial objections were material rather than religious.

19. The evidence with respect to the initial objections raised by the applicant, together with the fact that the possibility of objection based upon religious grounds came from the witness Dean, persuades us that notwithstanding the genuine religious convictions and beliefs of the applicant the real grounds of his objections to the trade union do not lie in those convictions and beliefs but, rather, on the fact that the applicant has rationalized his objections to the union on religious grounds after he was made aware of the provisions of section 39 of the Act.

20. Accordingly, the Board is not satisfied that the applicant, because of his religious conviction or belief, objects to joining the trade union or objects to the paying of dues or other assessments to the trade union.

21. The applicant is therefore dismissed.

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members J. D. Bell and O. Hodges.

DECISION OF THE BOARD: November 29, 1974.

1. This is an application for amendment of the Board's decision of September 3, 1974.

2. The circumstances giving rise to this supplementary endorsement are substantially similar to the circumstances giving rise to a similar supplementary endorsement in Board File 59-74-PH.

3. Having considered the representations of the parties, the Board revokes paragraph 3 of its decision of September 3, 1974 and substitutes the following therefor:

3. Accordingly, the Board consents to the institution of prosecutions against the respondent for the following offences alleged to have been committed:

- (1) That the respondent, as President of London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., counselled an unlawful strike in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974;
- (2) That the respondent, as President of London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., procured an unlawful strike in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd

day of July, 1974, and continuing until the first day of August, 1974;

- (3) That the respondent, as President of London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., supported an unlawful strike in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974;
- (4) That the respondent, as President of London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., encouraged an unlawful strike in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974;
- (5) That the respondent, as President of London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., threatened an unlawful strike in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974.

ADDENDUM BY BOARD MEMBER OLIVER HODGES: November 29, 1974.

In the exercise of my discretion and considering all of the evidence and in the particular circumstances of the instant case, I am impelled to add the following comment. The unanimous decisions of this panel of the Board highlight a distinction between hospital employees and employees in other areas of employment. That distinction is in the Hospital Labour Disputes Arbitration Act and the provisions made therein for the final settlement of contract disputes by arbitration. A declaration of an unlawful strike and therefore a consent to prosecute is not in other cases granted by the Board after an unlawful strike when employees have returned to work, unless there is a history of recurrent strike activity of an unlawful nature or justified apprehension of such further strike activity. The purpose in not granting declarations as a general policy in these circumstances is that it is in the public interest to bring an end to conflict between the parties. It should be understood that punitive measures taken by an employer against employees or a trade union through the courts would correct nothing in a labour relations sense but would on the other hand be likely to rekindle enmity, cause further resentment and generally exacerbate the relationship between an employer, the employees and the trade union.

Considering the attitudes evident today among members of trade unions toward their own elected officers or appointed representatives, it must be clear that demands growing out of prevailing adverse economic conditions cannot always be contained within the accepted framework of customary collective bargaining. In my opinion, tolerance for such aberration and expression of discontent is more conducive to industrial harmony, peace and good order than suppression by force of authority or punishment by way of penalties provided for in The Labour Relations Act and imposed by the courts.

While the respondent has the legal right to seek the imposition of those penalties, the decisions of the Board and the moral suasion effected thereby upon these employees and their trade union, in my view, adequately serves the employer's purposes in these matters. The decisions of the Board were unanimous. I am not expressing a dissenting opinion, since I joined in the decisions. I am making an observation in the light of long practical experience and, as I see it, in the interest of re-establishing a reasonable working relationship between the parties who must live and work together in the service of the sick, suffering and helpless in our hospitals. The working conditions and wages in hospitals appear to be among the least attractive in society. Yet the services performed are vital to many citizens at one time or another.

On the evidence, the Board had no alternative here but to find as it did. Those who now proceed further to prosecute in the courts must

carefully weigh the wisdom of proceeding with the punitive process. Getting along together in our increasingly tense society requires a depth of understanding that goes beyond the tit for tat syndrome and punishment under the law.

59-74-PH: THE NORFOLK HOSPITAL ASSOCIATION (Applicant) v. London and District Building Service Workers' Union, Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members J. D. Bell and O. Hodges.

DECISION OF THE BOARD: November 29, 1974.

1. In its endorsement of September 3, 1974, the Board consented to the institution of a prosecution against the respondent trade union for the following offence alleged to have been committed:

that the respondent has called or authorized an unlawful strike in violation of section 8(2) of the Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, c. 152, and the Ontario Labour Relations Act, R.S.O. 1970, section 65.

2. Paragraph 4 of the same endorsement stated that "The appropriate documents will issue". The applicant now seeks to obtain formal consent documents. To this end, counsel submitted a draft consent in the following form:

ONTARIO LABOUR RELATIONS BOARD

IN THE MATTER OF The Hospital Labour Disputes Arbitration Act, R.S.O. 1970 Chapter 208, and amendments thereto

B E T W E E N :

THE NORFOLK HOSPITAL ASSOCIATION,
Applicant
- and -

LONDON AND DISTRICT BUILDING SERVICE WORKERS'
UNION, LOCAL 220 S.E.I.U., A.F.L., C.I.O., C.L.C.,
Respondent

C O N S E N T

UPON THE APPLICATION of THE NORFOLK HOSPITAL ASSOCIATION for Consent to Institute a Prosecution against the Respondent, LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C., pursuant to the provisions of Section 90 of The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, and upon hearing read the Application and Replies, and upon hearing evidence adduced in the presence of Counsel for the Applicant and the Respondent, and upon hearing what was alleged by Counsel aforesaid:

1) The Ontario Labour Relations Board consents to the institution of a prosecution pursuant to its decision dated the 3rd day of September, 1974, against the Respondent, LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C., in the matter of the following offence:

(1) The Respondent, LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C., called an unlawful strike in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974.

DATED AT TORONTO, ONTARIO this day of 197

Vice-Chairman,
Labour Relations Board

A second consent in similar form is also submitted, the only change being that for the word called in the seventh last line of the first consent there is substituted the word authorized.

3. Following the receipt of the draft consents, the Registrar advised counsel that since the draft consents varied from the formal endorsement, the panel wished to meet with counsel to settle the terms of the consents and consider what amendments to the formal endorsement, if any, were necessary

4. Pursuant to the Registrar's letter, the Board met with counsel for both parties and afforded them full opportunity to make representations as to the issuance of formal consent documents. Counsel for the applicant contended, in effect, that the request for two consents, one dealing with an allegation that the respondent had authorized an unlawful strike and the other dealing with an allegation that the respondent had called an unlawful strike, did not constitute a material variation from or alteration to its original application. However, he conceded that the concluding words of the consent: "with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974" did not appear either in the formal application or in the Board's original endorsement. However, he argued that the addition of those words was consistent with the evidence adduced before the Board and asked, in effect, that paragraph 3 of the Board's endorsement be amended accordingly and that the formal consents be issued in accordance with the amended endorsement.

5. Counsel for the respondent opposed any amendment to the Board's endorsement and, in fact, argued that no formal consent documents should issue. He pointed out that the material facts recited in Appendix "A" to the original application showed that the alleged offence commenced on or about April 25, 1974. Relying on A.M. Woolfrey, Oshawa, General Motors Limited, et al., OLRB M.R. June 1968 p. 294, he contended that since more than six months had elapsed since the commencement of the alleged offence, no purpose could now be served in issuing the formal consent documents. While he did not disagree that the addition of the phrase "with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974" conformed to evidence heard by the Board, he resisted any amendment to the original endorsement.

6. It has long been the practice of the Board in dealing with applications for consent to prosecute to separate the reasons for decision from the formal consent documents. An obvious justification for this practice is that in those cases where the Board's decision recites the details of evidence adduced before it or comments upon the merits of the representations made by the parties, those comments and reasons ought not to come before the Provincial Court. Accordingly, the practice has developed for the consent document to contain only the description of the offence put forward by the applicant. Since the applicant has the carriage of the prosecution and is responsible for the drafting of the formal information, the Board has required that the applicant draft the formal consent document. The only legitimate concern of the Board is that the draft consent not be at variance from its formal decision and from the evidence adduced before it.

7. In the instant case, there is no suggestion by the respondent that the draft consent prepared by counsel for the applicant is at variance with the evidence. However, as we have said, it is apparent

that the terms of the consent do vary from the endorsement of September 3. However, having considered the representations of the parties, we see no reason why the applicant's request to amend the endorsement of September 3 ought not to be granted. The Board has broad powers under section 95(1) to vary its decisions and we are not persuaded that the respondent is prejudiced in any way by the variation sought by the applicant in the instant case. Whether or not the applicant is statute-barred, as the respondent contends, is something for consideration by the Provincial Court. However, in reference to the A.M. Woolfrey case, supra, we point out that there is judicial authority supporting the proposition that in the case of a continuing offence, the commencement of the six-month limitation period for a summary conviction offence under S. 693(2) of the Criminal Code is not the first date on which the offence was committed or on which the prosecuting authorities became aware of the commission of the offence: see Regina v. Belgal Holdings Ltd., [1967] 1 O.R. 405, and Dressler v. Tallman Gravel & Sand Supply Ltd., [1963] 36 D.L.R. (2d) 398.

8. We wish to make it clear, however, that in complying with the applicant's request, the Board takes no responsibility for the sufficiency, or otherwise, of the consents to support any informations which may be issued. That is entirely the responsibility of the applicant.

9. Accordingly, paragraph 3 of the Board's endorsement is revoked and the following substituted therefor:

3. The Board accordingly consents to the institution of prosecutions against the respondent trade union for the following offences alleged to have been committed:

- (1) That the respondent, London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., called an unlawful strike in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974;
- (2) That the respondent, London and District Building Service Workers Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., authorized an unlawful strike

in violation of Section 8(2) of The Hospital Labour Disputes Arbitration Act, R.S.O. 1970, as amended by S.O. 1972, Chapter 208, and The Ontario Labour Relations Act, R.S.O. 1970, Chapter 232, Section 65, with the aforesaid strike commencing the 22nd day of July, 1974, and continuing until the first day of August, 1974.

ADDENDUM BY BOARD MEMBER OLIVER HODGES: November 29, 1974.

In the exercise of my discretion and considering all of the evidence and in the particular circumstances of the instant case, I am impelled to add the following comment. The unanimous decisions of this panel of the Board highlight a distinction between hospital employees and employees in other areas of employment. That distinction is in the Hospital Labour Disputes Arbitration Act and the provisions made therein for the final settlement of contract disputes by arbitration. A declaration of an unlawful strike and therefore a consent to prosecute is not in other cases granted by the Board after an unlawful strike when employees have returned to work, unless there is a history of recurrent strike activity of an unlawful nature or justified apprehension of such further strike activity. The purpose in not granting declarations as a general policy in these circumstances is that it is in the public interest to bring an end to conflict between the parties. It should be understood that punitive measures taken by an employer against employees or a trade union through the courts would correct nothing in a labour relations sense but would on the other hand be likely to rekindle enmity, cause further resentment and generally exacerbate the relationship between an employer, the employees and the trade union.

Considering the attitudes evident today among members of trade unions toward their own elected officers or appointed representatives, it must be clear that demands growing out of prevailing adverse economic conditions cannot always be contained within the accepted framework of customary collective bargaining. In my opinion, tolerance for such aberration and expression of discontent is more conducive to industrial harmony, peace and good order than suppression by force of authority or punishment by way of penalties provided for in The Labour Relations Act and imposed by the courts.

While the respondent has the legal right to seek the imposition of those penalties, the decisions of the Board and the moral suasion effected thereby upon these employees and their trade union, in my view, adequately serves the employer's purposes in these matters. The decisions of the Board were unanimous. I am not expressing a dissenting opinion, since I joined in the decisions. I am making an observation in the light

of long practical experience and, as I see it, in the interest of re-establishing a reasonable working relationship between the parties who must live and work together in the service of the sick, suffering and helpless in our hospitals. The working conditions and wages in hospitals appear to be among the least attractive in society. Yet the services performed are vital to many citizens at one time or another.

On the evidence, the Board had no alternative here but to find as it did. Those who now proceed further to prosecute in the courts must carefully weigh the wisdom of proceeding with the punitive process. Getting along together in our increasingly tense society requires a depth of understanding that goes beyond the tit for tat syndrome and punishment under the law.

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5223-73-R: The Canadian Union of Public Employees and its Local 251 (Applicant) v. The Regional Municipality of Durham (Respondent). (GRANTED).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

OCTOBER

6262-74-M: Canadian Union of Public Employees and its Local #960 (Applicant) v. Oshawa Public Library Board (Respondent). (AFFIRMATIVE).

REFERENCE TO BOARD PURSUANT TO SECTION 96

6352-74-M: Colautti Brothers Marble Tile and Carpet Inc. (Employer) v. The Ontario Provincial Conference Marble, Tile, Terrazzo, Cement Masons, Resilient Floor Layers and their Helpers of the Bricklayers, Masons & Plasterers International Union of America (Trade Union). (TERMINATED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

5846-74-R: Canadian Union of Public Employees (Applicant) v. Thunder Bay District Health Unit (Respondent). (REQUEST DENIED).

5999-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Canada Building Materials Company (Respondent). (REQUEST DENIED).

6291-74-R: International Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Formosa Spring Brewery (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) v. Group of Employees (Objectors). (REQUEST DENIED).

6481-74-R: Canadian Steelworkers' Union (Applicant) v. Lely Limited (Respondent). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

4738-73-U: United Radio Electrical and Machine Workers of America (Complainant) v. Beaver Electronics Limited (Respondent). (REQUEST DENIED).

(1974) 2 OLRB M.R. - PAGE 657.

5470-74-U: Ward Shellington and Those Persons Named In Schedules "A" Attached Hereto (Complainants) v. Imperial Tobacco Products (Ontario) Limited, Tobacco Workers International Union, Local 323, Charles Hill, Alexander Jackson, Sydney Harker, John Wynd, Albert Battell, Anstruther Williamson, George Jones, Harvey Stewart, Leslie Cook and Bruce Starkey (Respondents). (REQUEST DENIED).

(1974) 2 OLRB M.R. - PAGE 667.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER 1974

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

No Vote Conducted

5966-74-R: United Steelworkers of America (Applicant) v. The Canadian Blower and Forge Company Limited (Respondent) v. Groups of Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent in Kitchener, save and except supervisors, persons above the rank of supervisor, salesmen, security guards, confidential secretary to the President, Vice-President Manufacturing and Vice-President Sales, confidential secretary to the Treasurer, confidential secretary to the Personnel Manager, Professional Engineers, Graduate Engineers, students employed during the school vacation period, students employed on a university or college co-operative training program, persons regularly employed for not more than 24 hours per week and persons covered by a subsisting collective agreement between the respondent and the United Steelworkers of America." (89 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 771.

6347-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Tamco Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its plant in Windsor, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation periods." (64 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 764.

6461-74-R: Ontario Nurses' Association (Applicant) v. St. Joseph's General Hospital (Respondent).

Unit #1: "all lay registered and graduate nurses employed by St. Joseph's General Hospital in the City of Thunder Bay engaged in a nursing capacity, save and except Head Nurses and persons above the rank of Head Nurse, Health and Welfare Nurse, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (94 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all lay registered and graduate nurses employed by St. Joseph's General Hospital in the City of Thunder Bay engaged in a nursing capacity regularly employed for not more than twenty-four hours per week, save and except Head Nurses and persons above the rank of Head Nurse, Health and Welfare Nurse and persons covered by subsisting collective agreements." (39 employees in the unit).

6474-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Roads Department of The Corporation of the Township of Lake of Bays (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent in the Township of Lake of Bays, save and except foremen, persons above the rank of foreman and office staff." (7 employees in the unit).

6495-74-R: Canadian Merchandising Employees' Union (Applicant) v. The Ottawa Roman Catholic Separate School Board (Respondent).

Unit #1: "all employees of the respondent employed at maintenance, services and plant operations in the Cities of Ottawa and Vanier, save and except foremen, persons above the rank of foreman, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (169 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING).

6540-74-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. Philips Electronics Industries Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all security guards employed by the respondent to protect its property at 116 Vanderhoof Avenue, Leaside, in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and persons regularly employed for not more than twenty-four hours per week." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(1974) 2 OLRB M.R. - PAGE 758.

6568-74-R: International Brotherhood of Electrical Workers - Local Union 586 (Applicant) v. Joe Pinheiro Electrical Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6624-74-R: Labourers' International Union of North America, Local 506 (Applicant) v. Markus Builders Supply (Canada) Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at or out of 100 Rossdean Drive in Metropolitan Toronto, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (16 employees in the unit).

6625-74-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Walker's Warehousing Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (19 employees in the unit).

6626-74-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Walker's Warehousing Limited (Respondent).

Unit: "all employees of the respondent working at and out of Newmarket, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (22 employees in the unit).

6632-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Capri Forming Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6634-74-R: Canadian Union of Operating Engineers (Applicant) v. Carleton Towers Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all stationary engineers and persons primarily engaged as their helpers, employed by the respondent at 2 Carleton Street, Toronto, save and except Chief Engineer and persons above the rank of Chief Engineer." (4 employees in the unit).

6635-74-R: Association of Commercial and Technical Employees, Local 1704, C.L.C. (Applicant) v. Cameron, Brewin and Scott (Respondent).

Unit: "all office and clerical employees of the respondent working at Metropolitan Toronto, save and except Articling Law Students, members of the legal profession, and bookkeeper." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6641-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers, Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Grover Paving Ltd. (Respondent).

Unit: "all employees of the respondent at its yard in North Bay, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (12 employees in the unit).

6646-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Regional Municipality of Waterloo (Respondent).

Unit: "all office and clerical employees of The Regional Municipality of Waterloo at Sunnyside Home, Kitchener, save and except supervisors, persons above the rank of supervisor and persons regularly employed for not more than 24 hours per week." (5 employees in the unit).

6647-74-R: United Brotherhood of Carpenters and Joiners of America Local Union 249 (Applicant) v. Kingston Lath & Plaster Limited (Respondent) v. Wood, Wire and Metal Lathers International Union, Local 545 (Intervener).

Unit: "all lathers and lathers' apprentices in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all

lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (20 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6654-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. A. & C. Management Services (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at Lawrence Park Apartment, Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6668-74-R: Warehousemen and Miscellaneous Drivers, Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Confederation Freezers Limited (Respondent).

Unit: "all employees of the respondent at the respondent's warehouse in Brampton, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (5 employees in the unit).

6669-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. P. L. S. Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6670-74-R: Labourers International Union of North America, Local 607 (Applicant) v. Tackle Construction Limited, Allied Industrial Piping Company Limited (Respondents).

Unit: "all construction labourers in the employ of the respondent, Allied Industrial Piping Company Limited in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6671-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Unger Roofing (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion,

save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6677-74-R: District 65, Distributive Workers of America (Applicant) v. Shop-Vac of Canada Ltd. (Respondent).

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except foremen and persons above the rank of foreman." (10 employees in the unit).

6687-74-R: Labourers' International Union of North America Local 247 (Applicant) v. Dineen Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Prince Edward County and the Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the Townships of Percy and Cramahe and all lands east thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6690-74-R: Retail Clerks International Association (Applicant) v. Little Brothers (Weston) Ltd. (Respondent).

Unit: "all licensed motor vehicle salesmen of the respondent at Weston, save and except managers and persons above the rank of manager." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THAT THE TERM "MANAGER" INCLUDES NEW CAR SALES MANAGER, USED CAR SALES MANAGER, FLEET SALES MANAGER, TRUCK SALES MANAGER AND LEASING MANAGER.).

6693-74-R: United Brotherhood of Carpenters and Joiners of America - Millworkers Local 802 (Applicant) v. The Larkin Lumber Company Limited carrying on business under the name of Cashway Lumber Company Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Windsor, Ontario, save and except foremen, persons above the rank of foreman, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (13 employees in the unit).

6694-74-R: Labourers' International Union of North America Local 247 (Applicant) v. Plyform Construction Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Prince Edward County and the Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the Townships of Percy and Cramahe and all lands east thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

6696-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers, Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Gap Construction Company Limited (Respondent).

Unit: "all truck drivers in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except foremen and persons above the rank of foreman." (6 employees in the unit).

6704-74-R: Ontario Nurses' Association (Applicant) v. Victorian Order of Nurses Simcoe County Branch (Respondent).

Unit: "all registered and graduate nurses engaged in a nursing capacity by the respondent save and except the nurse in charge and persons above the rank of the nurse in charge." (22 employees in the unit).

6705-74-R: Ontario Nurses' Association (Applicant) v. The Queen Elizabeth Hospital (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing capacity at the respondent Hospital, in the Municipality of Metropolitan Toronto, save and except nurse manager, persons above the rank of nurse manager, health services supervisor, chief instructor and persons regularly employed for not more than twenty-four hours per week." (43 employees in the unit).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity regularly employed by the respondent hospital for not more than twenty-four hours per week save and except nurse manager, persons above the rank of nurse manager, health services supervisor, chief instructor and persons heretofore represented for collective bargaining purposes." (4 employees in the unit).

6706-74-R: Ontario Nurses' Association (Applicant) v. Dufferin Area Hospital (Respondent).

Unit: "all registered and graduate nurses employed in a nursing capacity by the respondent at Orangeville, Ontario, save and except head nurses and persons above the rank of head nurse." (83 employees in the unit).

6709-74-R: International Brotherhood of Pottery and Allied Workers (Applicant) v. Cornwall Brass & Iron Foundries Ltd. (Respondent).

Unit: "all employees of the respondent at Charlottenburgh Township, save and except foremen and persons above the rank of foreman." (24 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6713-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Faulkner Well Drilling Company Limited (Respondent).

Unit: "all employees of the respondent in the Townships of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

6718-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Drew Chemical Limited (Respondent).

Unit: "all employees of the company at its plant in Ajax, save and except office, clerical, laboratory and sales staff, students employed during the school vacation period, and persons regularly employed for not more than 24 hours per week." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6724-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Standard Machine & Equipment Incorporated (Respondent) v. United Cement, Lime and Gypsum Workers International Union (Intervener #1) v. United Cement, Lime and Gypsum Workers International Union, Local 424 (Intervener #2).

Unit: "all employees of the respondent in Prince Edward County and the Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the Townships of Percy and Cramahe and all lands east thereof in the United Counties of Northumberland and Durham, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

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6725-74-R: Canadian Union of Public Employees (Applicant) v. Oxford Health Unit (Respondent).

Unit: "all employees of the respondent in the County of Oxford save and except Medical Officer of Health, Chief Public Health Inspector, Senior Clerk-Typist, persons above the rank of Medical Officer of Health, Chief Public Health Inspector and Senior Clerk-Typist and Registered and Graduate Nurses." (10 employees in the unit).

6729-74-R: Christian Labour Association of Canada (Applicant) v. St. Catharines Glass & Paint Limited (Respondent).

Unit: "all glaziers and glaziers' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING AND UPON AGREEMENT OF THE PARTIES).

6731-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Earls court Children's Home (Respondent).

Unit: "all employees of the respondent at Earls court Children's Home in Metropolitan Toronto, save and except the Director, and Business Manager and persons above the rank of Director, and Business Manager." (39 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6737-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. York Mills Holdings (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at York Mills Towers Apartments, Don Mills, including resident superintendents, save and except property managers, persons above the rank of property, office and clerical staff." (3 employees in the unit).

6745-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Faulkner Well Drilling Company Limited (Respondent).

Unit: "all employees of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6746-74-R: Labourers International Union of North America Local 837 (Applicant) v. Vin-Ton Contracting Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

6753-74-R: Canadian Union of Public Employees (Applicant) v. Soo Arena Association (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent employed at the Soo Pee Wee Arena in the City of Sault Ste. Marie, Ontario, save and except manager, persons

above the rank of manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (25 employees in the unit).

6758-74-R: Teamsters Local Union 230, Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen & Helpers International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers (Applicant) v. Kilmer Van Nostrand Contractors (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener).

Unit: "all truck drivers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by subsisting collective agreements between the respondents and the applicant and between the respondent and the intervener." (4 employees in the unit).

6762-74-R: Local Union 278 International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America C.L.C. (Applicant) v. Coca-Cola Ltd. (Respondent).

Unit: "all office employees of Cola-Cola Ltd. at Windsor, save and except Office Manager, persons above the rank of Office Manager, foremen and Sales Supervisors." (4 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6772-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Humber Ready-Mix Concrete Limited (Respondent).

Unit: "all employees of the respondent working at Mississauga, Ontario, save and except dispatcher, persons above the rank of dispatcher, office and sales staff, and persons regularly employed for not more than twenty-four hours per week." (16 employees in the unit).

6773-74-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Silverwood Dairies, Sudbury Branch, Division of Silverwood Industries Limited (Respondent).

Unit: "all office employees of the respondent in Sudbury, Ontario, save and except office manager, persons above the rank of office manager, accountants, sales personnel, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (2 employees in the unit).

6777-74-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 527 (Applicant) v. North Eastern Mechanical Contracting Limited (Respondent) v. Employee (Objector).

Unit: "all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6778-74-R: The Bricklayers Masons and Plasterers International Union of America, Local No. 12 (Applicant) v. John E. Smith & Son (1968) Limited (Respondent) v. Local 298, Operative Plasterers' and Cement Masons' International Association (Intervener).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6779-74-R: Christian Labour Association of Canada (Applicant) v. Lakeview Sheet Metal (Orillia) Limited (Respondent).

Unit: "all sheet metal workers and sheet metal apprentices in the employ of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all lands north thereof in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6803-74-R: United Steelworkers of America (Applicant) v. Modular Architectural Components Limited (Respondent) v. Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent company in Cobourg, save and except the comptroller and persons above the rank of comptroller, and those persons covered by the subsisting collective agreement between the respondent and the Sheet Metal Workers International Association." (13 employees in the unit).

6811-74-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Aalton Construction Co. Ltd. (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6814-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. George Wimpey Canada Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (27 employees in the unit).

6815-74-R: Laborers' International Union of North America Local Union No. 597 (Applicant) v. J. D. Coad Construction Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Townships of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6816-74-R: Labourers International Union of North America Local 837 (Applicant) v. Antici Construction Co. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6838-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Montcalm Construction Inc. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6846-74-R: International Molders & Allied Workers Union (Applicant) v. Ex-Cell-O Employees (London) Recreation & Benefit Fund (Respondent).

Unit: "all employees of the respondent at London, Ontario." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6849-74-R: International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 (Applicant) v. Arcan Eastern Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan

Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6873-74-R: Laborers' International Union of North America Local Union No. 597 (Applicant) v. Loaring Construction Co. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope) save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6881-74-R: Labourers' International Union of North America, Local 493 (Applicant) v. W. J. Nolan Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Townships of Caldwell, Springer, Field, Badgerow, Hugel, Kirkpatrick and MacPherson in the District of Nipissing (excepting therefrom those portions of the Townships of Hugel, Kirkpatrick and MacPherson which are included within a fifty-five mile radius of the City of Sudbury Federal Building), save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

6897-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cosentino Construction Company Ltd. (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

5765-74-R: International Union, United Plant Guard Workers of America, Local 1962 (Applicant) v. The Ontario Jockey Club (Respondent).

Unit: "all security guards employed by the respondent at its Woodbine Race Course in the Borough of Etobicoke in the Municipality of Metropolitan Toronto save and except Corporals, Detectives, persons above the rank of Corporal and Detective, office staff, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (62 employees in the unit).

Number of names of persons on voters' list		55
Number of persons who cast ballots	29	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	24	
Number of ballots marked against applicant	4	

5766-74-R: International Union, United Plant Guard Workers of America, Local 1962 (Applicant) v. The Ontario Jockey Club (Respondent).

Unit: "all security guards employed by the respondent at its Garden City Raceway in the town of Niagara-on-the-Lake in the Regional Municipality of Niagara save and except Corporals, Detectives, persons above the rank of Corporal and Detective, office staff, persons regularly employed for not more than twenty-four hours per week and persons covered by the subsisting collective agreements." (35 employees in the unit).

Number of names of persons on revised voters' list		34
Number of persons who cast ballots	25	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	4	

6076-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Ure-Al Corporation (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the installation or application of insulation materials and the spraying of accoustical finish and fire-proofing materials, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on voters' list		8
Number of persons who cast ballots	8	
Number of ballots marked in favour of applicant	8	
Number of ballots marked in favour of intervener	0	

6082-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Donalco Services Ltd. (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #1) v. Sprayed Fireproofing Association (Intervener #2) v. Labourers' International Union of North America, Local 506 (Intervener #3).

Unit: "all employees of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton, and the Township of Pickering in the County of Ontario, engaged in the installation or application of insulation materials and the spraying of acoustical finish and fireproofing materials, save and except job foremen and persons above the rank of job foreman and persons covered by a subsisting collective agreement with Labourers' International Union of North America, Local 506." (7 employees in the unit). (THE BOARD DIRECTED THAT THE BALLOTS BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		5
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	3	
Number of ballots marked in favour of intervener	0	

6149-74-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. The Ontario Jockey Club (Respondent).

Unit: "all security guards employed by the respondent at the Greenwood Race Track, Toronto, in the Municipality of Metropolitan Toronto, save and except corporals and detectives, persons above the rank of corporal and detective, office staff, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (63 employees in the unit).

Number of names of persons on voters' list		63
Number of persons who cast ballots	35	
Ballots segregated and not counted	4	
Number of ballots marked in favour of applicant	31	
Number of ballots marked against applicant	0	

6569-74-R: Christian Labour Association of Canada (Applicant) v. Rayco Stamping Products (Respondent).

Unit: "all employees of the respondent at Windsor, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, security guards, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (110 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		98
Number of persons who cast ballots	80	
Number of ballots marked in favour of applicant	71	
Number of ballots marked against applicant	9	

6585-74-R: The Canadian Union of Public Employees (Applicant) v. The Metropolitan Toronto Central Library (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto employed as professional librarians, save and except department heads, section heads, secretaries to the director, associate director, head of the Central Library, secretary-treasurer, personnel officer, and professional librarians regularly employed for not more than twenty-four hours per week." (61 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		58
Number of persons who cast ballots	53	
Number of ballots marked in favour of applicant	34	
Number of ballots marked against applicant	19	

6588-74-R: Christian Labour Association of Canada (Applicant) v. Philips Electronics Industries Ltd. (Respondent).

Unit: "all employees of the respondent at the Town of Strathroy, save and except foremen and those above the rank of foreman, office and sales staff, technical personnel, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (339 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		258
Number of persons who cast ballots	258	
Number of spoiled ballots	5	
Number of ballots marked in favour of applicant	130	
Number of ballots marked against applicant	123	

6604-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. The Board of Education for the City of Toronto (Respondent) v. Operative Plasterers and Cement Masons' International Association of the United States and Canada, Local 598 (Intervener #1) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #2).

Unit: "all employees of the respondent in the City of Toronto employed as plasterers, save and except Administrative Office Staff, persons above the rank of substitute and assistant foreman, drivers and drivers' helpers, mechanics' helpers (Labourers), watchmen and employees covered under separate collective agreements with the respondent." (18 employees in the unit).

Number of names of persons on voters' list		19
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	18	
Number of ballots marked in favour of intervener	1	

6633-74-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Peoples Movers and Cartage Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, dispatchers, persons above the rank of foreman and dispatcher, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (35 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		34
Number of persons who cast ballots	33	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	13	

Applications Certified Subsequent to Post-Hearing Vote

5845-74-R: Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Metropolitan Meat Packers Limited (Respondent) v. The Metropolitan Meat Packers Employees' Association (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (54 employees in the unit).

Number of names of persons on voters' list		64
Number of persons who cast ballots	62	
Ballots segregated and not counted	1	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	36	
Number of ballots marked against applicant	23	

6192-74-R: Service Employees Union Local 204, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Our Lady of Mercy Hospital (Respondent) v. Ontario Physiotherapy Association (Intervener) v. Group of Employees (Objectors).

Unit: "all lay employees of Our Lady of Mercy Hospital in Metropolitan Toronto save and except medical staff, graduate nursing staff, undergraduate nursing staff, dieticians, undergraduate dieticians, graduate pharmacists, graduate physiotherapists, occupational therapists, occupational therapy assistants, aides to the priest, technical personnel, supervisors, foreman and those above the rank of foreman, supervisors, office staff, persons employed for not more than twenty four hours per week and students employed during the school vacation period." (233 employees in the unit).

Number of names of persons on revised voters' list		215
Number of persons who cast ballots	207	
Ballots segregated and not counted	4	
Number of spoiled ballots	8	
Number of ballots marked in favour of applicant	141	
Number of ballots marked against applicant	54	

6258-74-R: Ontario Nurses' Association (Applicant) v. Port Colborne General Hospital (Respondent).

Unit: "all Registered and Graduate Nurses employed by the Port Colborne General Hospital, Port Colborne, engaged in a nursing capacity, save and except Head Nurses and persons above the rank of Head Nurse." (76 employees in the unit).

Number of names of persons on revised voters' list		76
Number of persons who cast ballots	66	
Number of ballots marked in favour of applicant	64	
Number of ballots marked against applicant	2	

6495-74-R: Canadian Merchandising Employees' Union (Applicant) v. The Ottawa Roman Catholic Separate School Board (Respondent).

Unit #2: "all employees of the respondent employed at maintenance, services and plant operations in the Cities of Ottawa and Vanier regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen and persons above the rank of foreman." (41 employees in the unit).

Number of names of persons on revised voters' list		44
Number of persons who cast ballots	34	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	15	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6524-74-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 527, Kitchener (Applicant) v. Twin City Plumbing and Heating (Respondent).

Unit: "all plumbers and plumbers' apprentices, steamfitters and steam-fitters' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

Number of names of persons on voters' list	5
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2

6544-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Corporation of the City of Sarnia, Marshall Gowland Manor (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent, save and except supervisors, persons above the rank of supervisor, registered nurses, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and office staff." (42 employees in the unit).

Number of names of persons on voters' list	43
Number of persons who cast ballots	42
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	20

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

No Vote Conducted

5004-73-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Cannel Freight Cartage Limited (Respondent). (43 employees).

5607-74-R: Retail Clerks International Association (Applicant) v. Garves Foods Limited (Respondent) v. Group of Employees (Objectors). (3 employees).

6310-74-R: Service Employees Union, Local 204, affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Mount Sinai Hospital (Respondent). (95 employees).

6354-74-R: Retail Clerks International Association (Applicant) v. Orange-roof Canada Limited (Respondent). (79 employees).

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6378-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Maple Leaf Mills Limited; Master Feeds Branch, London, Ontario (Respondent). (8 employees).

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6580-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Cadillac Fairview Corporation Limited (Respondent). (54 employees).

6623-74-R: Federation of Children's Aid Staffs (Applicant) v. Loyal True Blue and Orange Home (Respondent). (10 employees).

6639-74-R: Service Employees Union, Local 204 AFL-CIO-CLC (Applicant) v. Simcoe County District Health Unit (Respondent). (6 employees).

6662-74-R: Retail, Wholesale and Department Store Union, AFL-CIO:CLC (Applicant) v. Elgin Labour Temple Association (Respondent). (3 employees).

6900-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. Kwik Lumber @ Hardware Limited (Respondent). (5 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

5962-74-R: Toronto Photoengravers Union, Local 35P - GAIU (Applicant) v. Peel Graphics Limited (Respondent).

Voting Constituency: "All photoengravers and apprentices of the respondent in Brampton, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees).

Number of names of persons on voters' list	6
Number of persons who cast ballots	6
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	3

6007-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Cem-Al Spray Limited (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada and its Local Union No. 48 (Intervener #1) v. Sprayed Fireproofing Association (Intervener #2).

Voting Constituency: "All employees of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in all sprayed or trowelled cementitious, fibre, urethane, cellulose materials for the purpose of fireproofing, acoustical, insulation and related work, save and except job foremen and persons above the rank of job foreman." (2 employees). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on voters' list	2
Number of persons who cast ballots	2
Number of ballots marked in favour of applicant	0
Number of ballots marked in favour of intervener	2

6008-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Findlay-Jones Insulation Company Limited (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada and its Local Union No. 48 (Intervener #1) v. Ontario Provincial Conference of the B.M. & P.I.U. of A. and Bricklayers, Stonemasons, & Tilesetters Union Local No. 2 Ontario (Intervener #2) v. Carpenters District Council of Toronto and Vicinity Locals No. 27, 666, 681, 1133, 1963, 3227, 3233. The United Brotherhood of Carpenters and Joiners of America (Intervener #3).

Voting Constituency: "All employees of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the installation or application of insulation materials and the spraying of acoustical finish and fireproofing materials, save and except job foremen and persons above the rank of job foreman and with the Bricklayers, Stonemasons & Tilesetters and its Local Union No. 2, and the Carpenters District Council of Toronto and Vicinity Locals No. 27, 666, 681, 1133, 1963, 3227, 3233, The United Brotherhood of Carpenters and Joiners of America." (19 employees). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL

BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on voters' list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	1	
Number of ballots marked in favour of intervener	5	

6525-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Signet Distributors Ltd. A division of Silversteins (Respondent).

Voting Constituency: "All employees of the respondent at London, Ontario, save and except foremen, dispatchers, persons above the rank of foreman and dispatcher, office and sales staff, and students employed during the school vacation period." (25 employees).

Number of names of persons on voters' list		25
Number of persons who cast ballots	25	
Number of ballots marked in favour of applicant	10	
Number of ballots marked against applicant	15	

6638-74-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Trent Rubber Services Limited (Respondent).

Voting Constituency: "All employees of the Respondent in Lindsay, Ontario, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, laboratory staff, persons employed for no more than twenty-four hours per week and students employed during the school vacation periods." (135 employees). (THE BOARD DIRECTED THAT THE ELEVEN PERSONS CHALLENGED BY THE APPLICANT AS BEING MANAGERIAL BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.). (THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.).

Number of names of persons on voters' list		123
Number of persons who cast ballots	113	
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	31	
Number of ballots marked against applicant	79	

Certification Dismissed Subsequent to Post-Hearing Vote

5517-74-R: Labourers' International Union of North America Local 247 (Applicant) v. John Entwistle Construction Limited (Masonry Division) (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Townships of Elizabethtown, Augusta, and Edwardsburgh and all lands south thereof (there are three Municipalities south of these townships" Brockville, Prescott and Cardinal) in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (21 employees in the unit).

Number of names of persons on revised voters' list		12
Number of persons who cast ballots	14	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	7	

5884-74-R: The International Brotherhood of Electrical Workers, Local 804 (Applicant) v. (1) H. Petri Electric (Kitchener) Ltd., (2) 279767 - Ontario Limited (Respondents) v. Group of Employees (Objectors).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

Number of names of persons on revised voters' list		7
Number of persons who cast ballots	6	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	5	

5907-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Superior Continental Canada Ltd. (Respondent) v. Superior Continental Canada Employees Association (Intervener).

Unit: "all employees of the respondent at its Stratford Plant save and except foremen, persons above the rank of foreman and office staff."
(85 employees in the unit).

Number of names of persons on revised voters' list		68
Number of persons who cast ballots	68	
Number of ballots marked in favour of applicant	18	
Number of ballots marked in favour of intervener	50	

6098-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Gazzola Paving Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman."
(15 employees in the unit).

Number of names of persons on revised voters' list		14
Number of persons who cast ballots	14	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	10	

6241-74-R: International Brotherhood of Painters & Allied Trades Local Union - 1891 (Applicant) v. G. Doerrsam & Sons Co. Ltd. (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener #1)

v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #2) v. Sprayed Fireproofing Association (Intervener #3).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York, and the County of Peel, the Township of Esquesing and the Townships of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman, and persons covered by a subsisting collective agreement between the respondent and intervener #1." (4 employees in the unit).

Number of names of persons on voters' list	5
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of intervener #2	3

6243-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. Claude Beaumier Construction Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (23 employees in the unit).

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	4

6389-74-R: The Canadian Union of Operating Engineers (Applicant) v. E. D. Smith & Sons Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all stationary engineers and persons primarily engaged as their helpers or maintenance employed in the operation of the boiler room of the respondent at Winona, Ontario, save and except the Assisting Chief Engineer and persons above the rank of Assistant Chief Engineer." (4 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	3	

6545-74-R: Warehousemen and Miscellaneous Drivers, Local Union No. 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Dubois Chemicals of Canada Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (20 employees in the unit).

Number of names of persons on revised voters' list		19
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	12	

6556-74-R: The Ottawa Newspaper Guild, Local 205, The Newspaper Guild (Applicant) v. The Journal Publishing Company of Ottawa, Limited (Respondent).

Unit: "all Office staff and special delivery drivers regularly employed for not more than 24 hours per week in the Circulation Department of The Ottawa Journal in Ottawa, save and except part-time supervisor of the office night staff and persons above that rank." (59 employees in the unit).

Number of names of persons on revised voters' list		57
Number of persons who cast ballots	53	
Number of ballots marked in favour of applicant	23	
Number of ballots marked against the applicant	30	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

6640-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Canadian General Electric Company Limited (Respondent). (19 employees).

6651-74-R: Office and Professional Employees International Union (Applicant) v. Stormont, Dundas and Glengarry County Board of Education (Respondent) v. Canadian Union of Public Employees and its Local #782 (Intervener). (158 employees).

6672-74-R: Labourers' International Union of North America Local 247 (Applicant) v. Wexford Concrete (Respondent). (3 employees).

6678-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the Borough of York (Respondent). (9 employees).

6679-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the Borough of Etobicoke (Respondent). (9 employees).

6680-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Scarborough Board of Education (Respondent). (26 employees).

6681-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the Borough of East York (Respondent). (4 employees).

6682-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. North York Board of Education (Respondent). (55 employees).

6683-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the City of Toronto (Respondent). (114 employees).

6688-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Sussex Square Developments (Respondent). (2 employees).

6689-74-R: Labourer's International Union of North America, Local 183
(Applicant) v. The Metropolitan Trust Company (Respondent). (5 employees).

6692-74-R: International Association of Machinists and Aero Space Workers
(Applicant) v. Hobbs-Williams Machinery Limited (Respondent). (22 employees).

6722-74-R: Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant)
v. E. C. King Contracting Ltd. (Respondent). (8 employees).

6723-74-R: Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant)
v. E. C. King Contracting Ltd. (Respondent). (7 employees).

6734-74-R: Labourers International Union of North America, Local 607
(Applicant) v. Allied Industrial Piping Limited (Respondent). (5 employees).

6740-74-R: International Molders & Allied Workers Union (Applicant) v.
Ex-Cell-O Corporation of Canada Limited (Respondent). (no employees).

6747-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Tackle Construction Limited (Respondent).
(6 employees).

6748-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Tackle Construction Limited, Mobile
Welding of Sudbury Limited, Allied Industrial Piping Co. Ltd. (Respondents). (6 employees).

6754-74-R: Labourers' International Union of North America, Local 183
(Applicant) v. Avena Investments Ltd. (Respondent). (4 employees).

6759-74-R: United Brotherhood of Carpenters and Joiners of America
(Applicant) v. Canadian Asbestos Company (Respondent). (2 employees).

6787-74-R: Labourers' International Union of North America, Local 493
(Applicant) v. Barne' Construction Limited (Respondent). (2 employees).

6817-74-R: Labourers' International Union of North America, Local 527
(Applicant) v. Vincent Archambault (Respondent). (4 employees).

6855-74-R: Labourers International Union of North America, Local 607
(Applicant) v. Tom Jones & Sons Limited (Respondent). (5 employees).

6856-74-R: Labourers' International Union of North America, Local 183
(Applicant) v. Quadra Properties Ltd. Raeburne Construction Ltd. Alor
Construction Ltd. (Respondent). (6 employees).

6872-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bandiera & Associates Toronto Limited (Respondent). (6 employees).

6889-74-R: Canadian Paperworkers Union (Applicant) v. (Mactac) Morgan Adhesives of Canada Ltd. (Respondent). (124 employees).

6899-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Armbr Materials & Construction Ltd. (Respondent). (21 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING NOVEMBER

5974-74-R: Dolores Kurt, on behalf of a group of petitioning employees of General Instrument of Canada Ltd. (Applicant) v. The International Union of Electrical, Radio and Machine Workers, Local 520 (Respondent). (DISMISSED).

Unit: "all employees of General Instrument of Canada Ltd., at its Waterloo, Ontario plant, save and except foremen, supervisors, assistant supervisors, persons above the rank of assistant supervisor, quality control, engineering, office and sales staff." (no employees in the unit).

Number of names of persons on revised voters' list	206
Number of persons who cast ballots	184
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	107
Number of ballots marked against respondent	75

6620-74-R: Robert E. Gilkinson (Applicant) v. International Brotherhood of Electrical Workers, Local Union 2345 (Respondent). (2 employees). (DISMISSED).

6755-74-R: Joseph Welt (Applicant) v. Labourers International Union of North America, Local 247 (Respondent) v. Kingston Dodge Chrysler (1963) Ltd. (Intervener). (18 employees). (DISMISSED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING
NOVEMBER

6350-74-R: Ontario Nurses' Association (Applicant) v. Porcupine Health Unit (Respondent). (GRANTED).

6369-74-R: Ontario Nurses' Association (Applicant) v. Sydenham District Hospital (Respondent). (GRANTED).

6507-74-R: Ontario Nurses' Association (Applicant) v. St. Joseph's General Hospital, Peterborough (Respondent). (GRANTED).

6511-74-R: Ontario Nurses' Association (Applicant) v. St. Joseph's General Hospital, Peterborough (Respondent). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
NOVEMBER

6087-74-U: Ontario Hydro (Applicant) v. Those Unions and Persons in Schedule "A" attached hereto (Respondents). (WITHDRAWN).

6093-74-U: Ontario Hydro (Applicant) v. United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of the United States and Canada and; its Local Union 221 (Respondents). (WITHDRAWN).

6094-74-U: Ontario Hydro (Applicant) v. Those persons named in Schedule "A" (Respondents). (WITHDRAWN).

6714-74-U: Labourers' International Union of North America, Local 493 (Applicant) v. United Brotherhood of Carpenters & Joiners of America, Local 2486, Paul Guertin and Leopold Bibeau (Respondents). (TERMINATED).

6741-74-U: Domtar Packaging Limited (Applicant) v. Canadian Paperworkers Union, and its Local 528, Red Rock, Ontario (Respondent). (GRANTED).

6743-74-U: E.G.M Cape & Company Ltd. (Applicant) v. International Brotherhood of Electrical Workers, Local 804, and William Collier (Respondents). (DISMISSED).

6763-74-U: Crane Canada Limited, Ontario Pottery Plant, (Trenton, Ontario) (Applicant) v. Ronald Philips, et al, (certain employees of the Applicant) (Respondents). (WITHDRAWN).

6764-74-U: Crane Canada Limited, Ontario Pottery Plant, (Trenton) (Applicant) v William Cole, et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

6765-74-U: Crane Canada Limited, Ontario Pottery Plant, (Trenton, Ontario) (Applicant) v. International Molders and Allied Workers Union, Local No. 3 (Respondent). (WITHDRAWN).

6770-74-U: Ball Brothers Limited (Applicant) v. William Collier, and International Brotherhood of Electrical Workers, Local 804 (Respondents). (DISMISSED).

6820-74-U: Crane Canada Limited (Applicant) v. Eugene Koperski, et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

6821-74-U: Crane Canada Limited (Applicant) v. Deborah McCann, et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

6836-74-U: Crouse-Hinds Canada Limited (Applicant) v. Laura Adam, and others on attached Schedules (Respondents). (GRANTED).

6840-74-U: Cornwall Gravel Company Limited (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent). (WITHDRAWN).

6841-74-U: Cornwall Gravel Company Limited (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent). (WITHDRAWN).

6843-74-U: Crane Canada Limited (Applicant) v. Daniel Walker and Randy Clement (Respondents). (WITHDRAWN).

6844-74-U: Crane Canada Limited (Applicant) v. Betty Menard (Respondent). (WITHDRAWN).

6845-74-U: Crane Canada Limited (Applicant) v. Don Cleaves, et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

6861-74-U: D-K CONSTRUCTION LTD. (Applicant) v. B. STRICKLAND; H. HOLLAWAY; K.W. BUILDING AND CONSTRUCTION TRADES COUNCIL; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804, AND BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL 12 (Respondents). (WITHDRAWN).

6919-74-U: Torontario Mechanical Electrical Co. Ltd., a corporation incorporated under the laws of the Province of Ontario (Applicant) v. The International Brotherhood of Electrical Workers (A.F.L.-C.I.O.-C.L.C.), Local Union 804 (Respondent). (TERMINATED).

6933-74-U: The Lummus Company Canada Limited (Applicant) v. L. A. STROM, et al (see Schedules A, B, C, D, E, F, G, H and I attached hereto) (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

6663-74-U: RCA Victor Employees Association (Applicant) v. RCA Limited (Respondent). (DISMISSED).

6697-74-U: Canadian Building Materials Company (Applicant) v. Pierre Beaulac, and others on attached list (Respondent). (GRANTED).

6712-74-U: National Grocers Company Limited (Applicant) v. Graham Glover, et al (See attached Schedule) (Respondents). (WITHDRAWN).

6834-74-U: Crane Canada Limited (Applicant) v. Eugene Koperski, et al, (certain employees of the Applicant) (Respondents). (WITHDRAWN).

6835-74-U: Crane Canada Limited (Applicant) v. Deborah McCann, et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

NOVEMBER

5975-74-U: John Rohatuk (Complainant) v. U.A.W. Union, Local 444 (Respondent). (DISMISSED).

6381-74-U: International Molders & Allied Workers Union (Complainant) v. Newport Heating and Marine Limited (Respondent). (GRANTED).

6560-74-U: Warehousemen and Miscellaneous Drivers Union, Local 419 (Complainant) v. Kuehne & Nagel International Ltd. (Respondent). (WITHDRAWN).

6592-74-U: Leo J. Charlebois (Complainant) v. United Assoc. Plumbers & Pipefitters Local 599 - Barrie (Respondent). (WITHDRAWN).

6609-74-U: William M. Sargent (Complainant) v. Glaziers & Glassworkers Union Local 1819 (Respondent). (WITHDRAWN).

6643-74-U: International Association of Machinists and Aerospace Workers (Complainant) v. Berts Auto Supply Ltd. (Respondent). (WITHDRAWN).

6655-74-U: Francine Leclerc (Complainant) v. Cochrane Nursing Home Limited (Respondent).

- and -

6656-74-U: Mlle. Lisette Vaillancourt (Complainant) v. Cochrane Nursing Home Limited (Respondent). (DISMISSED).

6657-74-U: Jean D. Scott (Complainant) v. Ed Raines and Service Employees Union Local 204 (Respondents). (WITHDRAWN).

6664-74-U: Labourers' International Union of North America, Local 183 (Complainant) v. Sussex Square Developments (Respondent). (WITHDRAWN).

6699-74-U: James Cavanagh (Complainant) v. Canadian Union of Public Employees, Local 43 (Respondent). (WITHDRAWN).

6708-74-U: H. C. Maass (Shop Steward) (Complainant) v. Canadian Rogers (Eastern) Limited Sheet Metal Workers' International Assoc. Local #30 (Respondents). (WITHDRAWN).

6733-74-U: Harry Carter, Albert Delaurier, Rene Laurin Raoul Martineau (Complainants) v. Robert Cummings, Clayton Peever (Respondents). (WITHDRAWN).

APPLICATION UNDER SECTION 10 (RIGHT OF ACCESS)

6726-74-M: United Steelworkers of America (Applicant) v. Selco Mining Corporation Limited (Respondent). (GRANTED).

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APPLICATIONS UNDER SECTION 39 DISPOSED OF DURING NOVEMBER

6499-74-M: N. Terence Black (Applicant) v. Toronto Typographical Union No. 91 (Respondent Trade Union) v. Computer Typesetting of Canada (Respondent Employer). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 832.

6769-74-M: Yvon Rochon (Applicant) v. United Steelworkers of America (Respondent Trade Union) v. International Nickel Company (Respondent Employer). (DISMISSED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

6636-74-M: The International Union of Operating Engineers Local 940 (Trade Union) v. The Lake of the Woods District Hospital Kenora, Ontario (Employer). (GRANTED).

6659-74-M: CSAO National (Inc.) (Trade Union) v. North Bay Hospital Commission Operating the North Bay Civic Hospital (Employer). (GRANTED).

6660-74-M: Nurses' Association North Bay Civic Hospital (Trade Union) v. North Bay Hospital Commission (Employer). (GRANTED).

6666-74-M: Service Employees Union, Local 478, AFL-CIO-CLC (Trade Union) v. St. Joseph's College and Motherhouse of the City of North Bay (Employer). (GRANTED).

6667-74-M: Canadian Union of Public Employees, Local No. 424 (Trade Union) v. Seaforth Community Hospital (Employer). (GRANTED).

6685-74-M: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Trade Union) v. Davidson Rubber Company Limited (Employer). (GRANTED).

6686-74-M: The Civil Service Association of Ontario National (Inc.) (Trade Union) v. Mount Sinai Hospital (Employer). (GRANTED).

6691-74-M: The Canadian Union of Public Employees and Local #45 (Trade Union) v. The Oshawa General Hospital (Employer). (GRANTED).

6700-74-M: RCA Victor Employees' Association (Trade Union) v. RCA Limited Toronto, Ontario (Employer). (GRANTED).

6701-74-M: Laundry, Dry Cleaning and Dye House Workers' International Union, Local 351 (Trade Union) v. Belle Cleaners & Launderers Limited (Employer). (GRANTED).

6744-74-M: Labourers' International Union of North America, Local 506 (Trade Union) v. Connolly Marble, Mosaic and Tile Company Limited (Employer). (GRANTED).

6774-74-M: Service Employees' Union, Local 210, Windsor, Ontario, Affiliate with the Service Employees International Union A.F.L.-C.I.O.-C.L.C. (Applicant) v. Salvation Army Grace Hospital, Windsor, Ontario (Respondent). (GRANTED).

6775-74-M: The Hotel and Club Employees' Union, Local 299, Toronto of The Hotel and Restaurant Employees' and Bartenders' International Union (A.F.L.-C.I.O.-C.L.C.) (Trade Union) v. Holiday Inn of Toronto - Downtown of the Commonwealth Holiday Inns of Canada Limited (89 Chestnut Street, Toronto, Ontario) (Employer). (GRANTED).

6800-74-M: Ontario Nurses' Association (Formerly The Nurses' Association Espanola General Hospital) (Trade Union) v. The Espanola General Hospital (Employer). (GRANTED).

6851-74-M: The Civil Service Association of Ontario (Inc.) Local 036-96-01 (Trade Union) v. The Salvation Army Grace Hospital, Windsor, Ontario (Employer). (GRANTED).

6877-74-M: Nurses' Association North York General Hospital (Trade Union) v. North York General Hospital (Employer). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING NOVEMBER

6542-74-R: The Toronto Motion Picture Projectionists Union Local #173 International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada (Applicant) v. T W C Television Limited (Respondent) v. Gunnar Domander (Employee). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 816.

6756-74-R: International Ladies' Garment Workers' Union (Applicant) v. Pert Knitting Ltd. (Respondent). (GRANTED).

JURISDICTIONAL DISPUTES

2370-72-JD: Labourers' International Union of North America Local 837 (Complainant) v. United Brotherhood of Carpenters and Joiners of America, Local Union 38 and C. A. Pitts Engineering Construction Limited (Respondents). (WITHDRAWN).

3902-73-JD: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Complainant) v. Ilena Construction Company Limited; Labourer's International Union of North America, Local 183; General Contractors Section of the Toronto Construction Association and The Toronto Form Work Association (Respondents). (DIRECTION).

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APPLICATION FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

NOVEMBER

6601-74-M: The Canadian Union of Public Employees and its Local Number 1189 (Applicant) v. The Corporation of the City of Owen Sound (Respondent). (TERMINATED).

REFERENCE TO BOARD PURSUANT TO SECTION 96

6395-74-M: Winco Steak N' Burger Restaurants Limited (Employer) v. The Hotels, Clubs, Restaurants, Taverns Employees' Union, Local 261, Ottawa, Ontario, Chartered by the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O. (Trade Union). (AFFIRMATIVE).

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APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

5714-74-R: Labourer's International Union of North America Local Union 493 (Applicant) v. Ken Bunyak's Bus Lines (Respondent). (REQUEST DENIED).

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6566-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Raylena Construction Co. Ltd. (Respondent). (REQUEST DENIED).

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DECEMBER



Monthly Report

ONTARIO LABOUR RELATIONS BOARD

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

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ERRATUM

On page 384 of "Bargaining Units Certified - No Vote Conducted" in the November 1974 Report - this unit was incorrect:

6734-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. York Mills Holdings (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at York Mills Towers Apartments, Don Mills, including resident superintendents, save and except property managers, persons above the rank of property, office and clerical staff." (3 employees in the unit).

This unit is correct:

Unit: "all employees of the respondent engaged in cleaning and maintenance at York Mills Towers Apartments, Don Mills, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (3 employees in the unit).

of long practical experience and, as I see it, in the interest of re-establishing a reasonable working relationship between the parties who must live and work together in the service of the sick, suffering and helpless in our hospitals. The working conditions and wages in hospitals appear to be among the least attractive in society. Yet the services performed are vital to many citizens at one time or another.

On the evidence, the Board had no alternative here but to find as it did. Those who now proceed further to prosecute in the courts must carefully weigh the wisdom of proceeding with the punitive process. Getting along together in our increasingly tense society requires a depth of understanding that goes beyond the tit for tat syndrome and punishment under the law.

6799-74-R: Graphics Arts International Union, Local No. 28-B, Toronto (Applicant) v. NCR CANADA LTD. (Respondent) v. Group of Employees (Objectors).

BEFORE: George W. Adams, Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Harold Caley, Charles Buhler and Henry Ashworth for the applicant; W. Winkler, W.H.M. Wilson and C.V. Lehman for the respondent; no one appearing for the objectors.

DECISION OF THE BOARD: December 2, 1974.

1. This is an application for certification.

. . . .

3. The employees for which the applicant seeks certification are already represented by Canadian Business Machine Workers' Union and were covered by a collective agreement negotiated between that trade union and the respondent. This agreement was effective from November 13, 1972 to November 12, 1974, and until November 19, 1975 if notice of termination was not given; but there is no contention that this application is untimely.

4. Section 2 of the aforementioned collective agreement provides that "[t]he Company agrees to recognize the Union as the exclusive collective bargaining agency for its employees at 222 Lansdowne Avenue, Toronto, Ontario and 15 Marmac Drive, Rexdale, Ontario save and except such employees as are hereinafter expressly excluded from the provisions of this Agreement". The Board was informed that operations at the Lans-

downe Avenue location referred to in Article 2 were discontinued effective June 30, 1974 and that the plant is no longer operative. However, by letter dated May 10, 1974, the respondent granted the Canadian Business Machine Workers' Union voluntary recognition in respect of the respondent's temporary facility located at 60 Baywood Road, Rexdale, Ontario.

5. Thus, in light of this history, and having regard to the agreement of the parties the Board further finds that all employees of the respondent employed at 15 Marmac Drive and 60 Baywood Road, Rexdale, Ontario, save and except main office, salaried, sales and service employees, cafeteria staff, plant guards, part-time employees, foremen, supervisors and all employees who have power to discipline employees on behalf of the respondent, constitute a unit of employees of the respondent appropriate for collective bargaining.

6. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on November 19, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. However, in these circumstances, the Board must exercise its discretion under section 7(2) of the Act and direct that a representation vote be taken. Voters will be given a choice between Graphics Arts International Union, Local 28-B, Toronto and Canadian Business Machine Workers' Union.

8. Had the Canadian Business Machine Workers' Union intervened in these proceedings the Board would have followed its usual practice and directed a vote in the name of the applicant as well as the aforementioned trade union. Notwithstanding the membership evidence of an applicant, the very existence of such an intervener, provided its bargaining rights have not been abandoned, casts a doubt on the true wishes of the employees which is most appropriately resolved by the taking of a representation vote. We see no reason to vary this practice despite the failure of the incumbent trade union to intervene and attend at the hearing, and in support of this ruling we rely upon Employees' Association of the Toronto Plants of Canadian John Wood Manufacturing Company, Limited and Service Station Equipment Company, Limited, and Canadian John Wood Manufacturing Co., Ltd. 46 CLLC 16,449, where Professor Finkelman wrote:

"...There has been no intervention in the present proceedings. Had the United Steelworkers of America, Local 3062, intervened in these proceedings, we should have followed our usual practice in such cases, a

practice sanctioned by the decision of the National Board in the New York Central case, [Dominion ¶10,436], and directed a vote in which the name of the petitioner as well as that of the aforementioned trade union would both have appeared on the ballot, so as to enable the employees to indicate their preference. In our opinion, the employees should be afforded such a choice in this instance despite the fact that the United Steelworkers of America, Local 3062, has not intervened in these proceedings. Such a course would carry out the thought which motivated the National Board in the New York Central case, supra, namely, that an organization which holds a collective agreement should not be displaced unless the employees are given an opportunity to mark their ballots in its favour.

Our conclusion in this respect is also in line with our decisions in the Beach Foundry case, [¶16,443], the Purity Bread case, [¶16,447] and the Toronto Transportation Commission case, [¶16,448]. The underlying principle in all of these cases is that stability in collective bargaining relations should be promoted to the fullest extent that the law will permit. This case must be distinguished from those cases in which an agreement has run its full course and the trade union or employees' organization party to such agreement, having lost interest in the employees, makes no effort to renew the agreement. It must also be distinguished from those cases in which a trade union or employees' organization party to an agreement has been dissolved or has disintegrated and has thus ceased to exist, Breihaupt Leather case, [¶16,446]. In those instances, we would not be inclined to include the name of such an organization on the ballot unless it actually intervened in the proceedings. Here, the trade union which was a party to the agreement was still a living force and still retained its interest in the collective agreement when the application of the present petitioner was filed."

9. The applicant argued that the incumbent trade union had abandoned its bargaining rights, and in support of this position it asked the Board to have regard both to the high degree of employee support enjoyed by it and to the failure of the incumbent to intervene in the proceedings. The Board was referred to Sudbury Mine, Mill and Smelter Workers Union Local 598 of the International Union of Mine, Mill and Smelter Workers (Canada) and The Walir Iron Works Limited, [1965] OLRB p. 156 (June); Printing Specialties and Paper Products Union, Local 466 and Dominion Milton Limited, [1963] OLRB p. 413 (Nov.); United Steelworkers of America v. Key-Air Conditioning and Refrigeration Ltd., [1964] OLRB p. 116 (June); and United Rubber, Cork, Linoleum and Plastic Workers of America and J.E. Thomas Specialties Ltd., [1970] OLRB p. 573 (Aug.).

10. As noted above, the Board has denied the applicant's request. The applicant admitted that all of the jurisprudence upon which it relied involved cases where the Board found on the evidence before it that the incumbent had abandoned its bargaining rights. In none of these cases, was the failure to attend at the hearing or to intervene in a proceeding construed as sufficient to support such a finding. Moreover, in the facts before this Board, the evidence of a recent collective agreement and offer of voluntary recognition point against any finding of abandonment. Thus, despite the warning contained in Rule 9(1) of the Board's Rules of Procedure, in these circumstances, we rule that the incumbent has not abandoned its bargaining rights and once this finding is made a representation vote involving a choice between the incumbent and the applicant becomes inevitable.

11. A petition apparently bearing the names of twelve employees was filed with the Board in opposition to the applicant. However, having regard to the Board's practice of directing a representation vote in these circumstances, the petition is not relevant.

12. In summary, the Board directs a representation vote in the bargaining unit found by the Board to be appropriate. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

13. Voters will be given a choice between Graphic Arts International Union, Local No. 28-B, Toronto and Canadian Business Machine Workers' Union.

14. The matter is referred to the Registrar.

6537-74-U: John (Hanna) Bachir (Complainant) v. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL 128 (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: J. Sintzel and J. Bachir for the complainant; A. M. Minsky and R. Kantor for the respondent.

DECISION OF THE BOARD: December 2, 1974.

1. The name "The Boilermakers Union Local 128" appearing in the style of cause of this complaint as the name of the respondent is amended to read: "International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128".

2. The complainant, John Bachir, alleges that two named officials of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (hereinafter referred to as Local 128) have dealt with him contrary to the provisions of sections 38(2), 60 and 61 of The Labour Relations Act.

3. The complainant is a welder and at all material times was a member in good standing of both Local 128 and Local 46 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (hereinafter referred to as Local 46). Immediately prior to August 16, 1974, Bachir was employed by a firm known as Instrument Control Systems (hereinafter referred to as ICS). As a member of Local 128 he had on approximately May 1, 1974 placed his name on the local's out-of-work list. On the afternoon of Friday, August 16th, 1974, he was called by the secretary-treasurer (and part-time dispatcher) of Local 128, Malcolm Janigan, and told that there was welding work available with a company known as Research-Cottrell on the following day, Saturday, August 17th. Janigan stated that Research-Cottrell, a sub-contractor engaged by Ontario Hydro at its Lakeview Generating Station, required welders for a job of some two to three weeks' duration. Bachir accepted the assignment, reported for work at the Lakeview Generating Station on Saturday, August 17th, worked the weekend of August 17th and 18th and was paid double time for both ways.

4. The Research-Cottrell welding work for Hydro at the Lakeview Generating Station continued throughout the following week. The complainant, however, was committed to return to work with ICS on Monday, August 19th. To fulfil this commitment, and in an attempt, as he put it, to "protect" his job opportunity as Research-Cottrell, he deliberately and knowingly made false and misleading representations to the management of Research-Cottrell. Specifically, during the course of the weekend of August 17th-18th, he told that company's superintendent, one Jackson, that he was subpoenaed to appear in court on Monday, August 19th, and on the basis of this pretence he was given permission by

Jackson to take Monday off. Later during the same weekend he told Local 128's steward, Frank Kelly, that his brother was seriously ill in Montreal, that he would have to travel to Montreal early in the week and would be absent from work through Wednesday, August 21st. That representation was also false. In fact, the complainant returned to work at ICS on Monday, August 19th, where he was continually employed until his termination from that company on October 18, 1974. Although no reference to these deliberate falsifications is made in the grievor's complaint, he conceded before us that he was not subpoenaed to appear in court and that his brother had not been ill during this period.

5 On Wednesday, August 21st, the complainant received word from his home of a telegram from Research-Cottrell terminating his employment. In some manner, not fully explained, he then made arrangements with ICS to be absent from work during the morning of August 22nd. On that morning he went to Research-Cottrell's project to determine why he had been terminated. From this point onward there are material and important factual differences between the complainant's evidence and the evidence tendered by the respondent. The complainant's version is that at approximately 9:00 a.m. on August 22nd he spoke to Local 128's steward, Kelly, who was alleged to have said, "The men found out that you are a member of another union". According to Bachir, Kelly related that Local 128's business manager, Stan Petronsky, had learned from an official of Local 46, one Howard, of the complainant's membership in Local 46. Bachir testified that Kelly asserted that if he, Bachir, "straightened things out" with Petronsky he would get his job back.

6. If Bachir's version of the conversation with Kelly on the morning of August 22nd is accepted, a very strong inference arises that Local 128 was instrumental in bringing about the complainant's dismissal. However, witnesses for Research-Cottrell and for Local 128 gave an entirely different account of what transpired between August 18th and August 21st. Petronsky testified that he did not learn of the problem until Tuesday, August 20th, when his temporary assistant, one Stewart, told him about membership complaints that Bachir held "dual membership" in Locals 128 and 46. Petronsky stated that he received a more detailed report at Local 128's Executive Board meeting on August 22nd and he asserted it was not until August 23rd (two days after the complainant's termination) that he was able to confirm the charge with Local 46's business manager, Howard. Petronsky denied that he had discussed the matter with Research-Cottrell at any time or that he had any role, direct or indirect, in Bachir's discharge.

7. Similarly, Frank Kelly, Local 128's steward, denied that he had played any part in the discharge. He stated that he had informed Jackson, Research-Cottrell's superintendent, on either August 20th or August 21st that Bachir had said that he would not be at work for at least the first three days of the week due to illness in his family. Kelly stated that

when Jackson told him on either Tuesday, August 20th or Wednesday, August 21st that Bachir's employment was to be terminated he (Kelly) told Jackson to advise Bachir of that fact by telegram.

8. Jackson testified that he made the "official" decision to "lay-off" the complainant on Wednesday, August 21st. Jackson's words were: "By Wednesday I figured we could do without him". Although it had been a rush job, he stated that by August 21st the urgent portion of the job had been completed and, moreover, it was then apparent that the complainant could not be relied upon.

9. There are obvious difficulties with the testimony given by both the complainant on the one hand and witnesses on behalf of Local 128 and Research-Cottrell on the other. The complainant, by his own admission, had been serious misrepresentations of fact to Research-Cottrell and to Kelly on the weekend of August 17th and 18th, both as to the court appearance and the family illness. His deception on these prior occasions cannot be ignored in assessing his credibility as a witness before the Board. Moreover, as pointed out by counsel for the respondent, Bachir put before the Board, as part of his formal complaint, a detailed statement of material facts in which he failed to disclose these earlier misrepresentations, referring instead to a request made of Research-Cottrell to take time off "to finish some personal business". It was not until he was called to give evidence before the Board that he admitted his deception. The Board is concerned with the lack of candour - to characterize it in the most charitable way - reflected in the complaint and the accompanying statement of material facts.

10. The opposing version, advanced by witnesses for Research-Cottrell and Local 128, is not entirely satisfactory. Had Research-Cottrell justified the complainant's termination on the basis of his misrepresentations or on the fact of his concealed employment with another firm, the matter would have been completely free from any doubt. However, there is no evidence that at the time of termination Research-Cottrell was aware of either fact. Instead, the termination is supported on somewhat ambivalent and, arguably, inconsistent grounds: first, that the emergency portion of the work was completed and secondly that since there was "quite a bit of welding to do" it was important that all the welders show up for work. As for Local 128 certain admissions tend to support the conspiracy theory advanced by the complainant: for example, Kelly's admission that the members had become aware of and were complaining about the complainant's dual membership prior to his discharge; the fact that Kelly, by his own admission, had reported this breach of the union's constitution to the union office prior to the termination; that it was Kelly who advised Jackson to send the complainant a telegram advising him of his discharge; and finally the timing of the discharge, which followed closely on the heels of discontent amongst Local 128's membership concerning the complainant's dual membership, rumours of which, Jackson admitted, had reached him.

11. The circumstantial evidence referred to in the preceding paragraphs is not sufficient to persuade us that the complainant was discharged because of pressures exerted by Local 128 on Research-Cottrell. To draw this inference we would have to disbelieve not only Petronsky (who denied discussing the matter with Research-Cottrell) and Kelly (who in the main confirmed the employer's version of the discharge) but also Jackson, who stated categorically that he was not concerned with the complainant union's affiliations but only with having sufficient men on hand to get the job done. Not only would we have to disbelieve those three witnesses, whose testimony was consistent in all material respects, but we would, as well, have to accept the uncorroborated evidence of the complainant, whose credibility is put in serious doubt by the manner in which he framed the complaint before us, not to mention his alibis to his employer on the weekend of August 16-17.

12. Strictly speaking, the complainant is limited to the allegation that on Wednesday, August 21st Petronsky and Kelly, acting on behalf of the union, contravened sections 38(2), 60 and 61 of the Act by bringing about his discharge. Counsel for the complainant conceded in argument the evidentiary weakness of the complainant's case under section 38(2). With this we agree. The complainant was unable to show either by direct evidence or by compelling circumstantial evidence that, on the balance of probabilities, the union required the employer to discharge him because he was a member of another union. In complaints under section 79, as the Act now stands, the ultimate onus rests upon the complainant and where, at the conclusion of the evidence, the probabilities remain in balance, the complaint must be dismissed.

13. The essence of a complaint that section 60 has been contravened is that the bargaining agent has acted in a manner that is arbitrary, discriminatory or in bad faith towards an employee within the bargaining unit. Typically, in complaints under section 60, a complainant alleges that his bargaining agent has failed or refused to process a grievance on his behalf against the employer. There is no suggestion, on the evidence before us, that the complainant sought to contest his discharge through the grievance procedure, much less that the union refused or neglected to do so on his behalf. Of course if we had sustained the complaint as it related to section 38(2), it might well have followed, somewhat tautologically perhaps, that the union had failed in its duty of fair representation. However, that is a legal conclusion with which we are not required to deal on the facts of this particular case. Accordingly, the complaint that the respondent violated section 60 of the Act must also be dismissed.

14. Finally there is the allegation that the union coerced or intimidated the complainant in respect of union membership contrary to section 61 of the Act. In contending that section 61 had been violated, counsel for the complainant relied, in the main, on events subsequent

to August 21st and in particular on statements made by Petronsky and Kelly to the complainant following his discharge which, counsel argued, showed the displeasure of Petronsky and Kelly with Bachir's dual membership and their desire to have him comply with the provisions of Local 128's by-laws and constitution which purport to prohibit dual union membership. It is arguable that, having regard to the interaction of sections 38(2) and 61, enforcement of such provisions may be inherently coercive. Be that as it may, the facts before us do not support a finding that either Petronsky or Kelly was presenting an ultimatum to the complainant concerning his dual membership. In our view, it cannot fairly be said that they were saying to Bachir either on August 21, 1974, or subsequently, that he would not be permitted to work with an employer under contract with Local 128 so long as he maintained his membership in Local 46. In fact, the witness Janigan gave uncontraverted evidence that the complainant, subsequent to his dismissal, remained on Local 128's out-of-work lists and was called on at least ten occasions and offered work. On at least some of these occasions the witness refused the available work assignment, either because the project was out of town and did not afford the opportunity for overtime or that the project was too short in duration. Therefore, even if we were prepared to permit the complainant to amend paragraph 4 of his complaint and rely on incidents subsequent to August 21st (and in this connection Sky Line Farms Limited, 62 CLLC ¶16,255) these rejected offers of alternative employment negate the assertion that the union was using its hiring-hall powers to coerce the complainant to cease to be a member of Local 46. However, we wish to add that this finding of fact does not preclude the complainant from raising the matter at some future time, should he remain a member in good standing of both locals and face a persistent denial of employment opportunities through Local 128's hiring hall. Nor are these comments intended to prejudice any defence which the union might then raise, including any argument in support of the legality or propriety of those provisions in its constitution or by-laws which purport to prohibit dual union membership.

15. For all of the above reasons the complaint is dismissed.

6739-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. VICTORIA HOSPITAL CORPORATION (Respondent) v. London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Intervener).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: I. J. Oram for the applicant; W. J. Whittaker, Q.C., and L. Heffernan for the respondent; Ted Wohl and Charles Davidson for the intervener.

DECISION OF THE BOARD:

December 3, 1974.

1. The name "Victoria Hospital Corporation, London, Ontario" appearing in the style of cause of this application as the name of the respondent is amended to read: "Victoria Hospital Corporation".
2. This is an application for certification in which the applicant seeks certification as bargaining agent for a bargaining unit comprising all pharmacy technicians and/or assistants employed by the respondent in the Pharmacy Department in London, with exceptions not here relevant.
3. The intervener is party to a subsisting collective agreement with the respondent. The intervener submits that the application should be dismissed on the grounds that the employees concerned are already covered by the collective agreement.
4. The respondent took the position that the persons in the proposed bargaining unit sought by the applicant had never been bargained for by the intervener and that they had, in fact, been overlooked throughout the course of collective bargaining between the respondent and the intervener.
5. The intervener advised the Board that it had launched a grievance under the procedures set out in the collective agreement in which it seeks, inter alia, a declaration that the pharmacy assistants are within the scope of the bargaining unit defined in the collective agreement. The intervener submitted, however, that notwithstanding the fact that the grievance is being processed to arbitration, this Board should decide the issue on the evidence and representations of the parties appearing before it.
6. It may well be that there are situations in which the Board may be obliged to determine the limits of the scope clause in a collective agreement. In the present case, however, the question of the scope of the bargaining unit covered by the collective agreement is, as already noted, the subject of a grievance which, the Board is advised, is going before an arbitrator pursuant to the terms of the collective agreement. The final settlement of disputes arising with respect to collective agreements is a matter assigned by The Labour Relations Act to arbitrators. It is, therefore, incumbent upon the Board in matters such as that presently before it to respect the legislative intent particularly in a situation where the process leading to arbitration has already commenced.
7. In the result, then, in the circumstances of this case, the Board finds that until such time as the issue of the extent of the scope clause in the collective agreement between the intervener and the respondent is determined under the grievance procedure, this application is premature.
8. The application is accordingly dismissed.

6797-74-U: The Canadian Workers Union (Applicant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

- and -

6808-74-U: The Canadian Workers Union (Applicant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

- and -

6809-74-U: The Canadian Workers Union (Applicant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

- and -

6810-74-U: The Canadian Workers Union (Applicant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: G. Perly for the applicant; D. L. Brisbin for the respondent.

DECISION OF THE BOARD: December 3, 1974.

1. The Board directs that the above applications be consolidated.
2. The applicant has applied to the Board for consent to institute a prosecution of the respondent for an alleged offence under the Act. The respective "Form 27" applications filed in these proceedings describe the nature of the alleged offence in the following terms:

"Unlawful Lockout"

"Unlawful Lockout of Robert Francis"

"Unlawful Lockout of Nicola Giacalone"

"Unlawful Lockout of Michael Cole and Michael Speers."

3. At the hearing of this matter on November 27, 1974, counsel for the respondent raised a preliminary objection to the Board's entertaining these applications on the basis that they were improperly framed in that the particulars did not reveal any section of the Act alleged to have been violated. He further argued that since more than one section of the Act pertains to the subject of "lockouts", the applicant's allegations are too vague for purposes of these proceedings and these applications therefore should be treated as a nullity. The applicant, on the other hand, submitted that this omission constitutes a minor legal technicality and that the matter was only raised for the first time at this hearing and was not alluded to in the respondent's "mass-produced" replies as filed in these proceedings. The Board reserved its decision in this regard and proceeded to entertain the evidence and representations of the parties with respect to other applications pending before us.

4. In the past, the Board has held that Section 47 of the Board's Rules of Procedure is applicable to applications for consent to institute prosecutions (see for example the Ellis Don Limited Case OLRB Monthly Report, August 1970, p. 587). In this regard, Section 47(1) of the Board's Rules of Procedure provides that where a person intends to allege improper or irregular conduct, he shall file "a concise statement of the material facts, actions and omissions upon which he intends to rely as constituting such improper or irregular conduct, including the time when and the place where the actions or omissions complained of occurred and the names of the persons who engaged in or committed them, but not the evidence by which the material facts, actions or omissions are to be proved, and, where he alleges that the improper or irregular conduct constitutes a violation of any provision of the Act, he shall include a reference to the section or sections of the Act containing such provision.

(emphasis added).

5. However, Section 47(3) of the Board's Rules of Procedure further provides as follows:

"Where a statement in an application or complaint or in any document filed under these Rules in respect of the application or complaint is so indefinite or incomplete as to hamper any person in the preparation of his case, the Board may, upon the request of the person made promptly upon the receipt of the application, complaint or document, direct that the information stated be made specific or complete and, if the person so directed fails to comply with the direction, the Board may strike the statement from the application, complaint or document."

6. The interactions of these two subsections have been summarized in The Freeman Electric Limited Case (1972) OLRB M.R. 822, where the Board at page 823, stated as follows:

"Where, however, allegations are deficient in particularity and no request for further particulars has been made prior to a hearing, in order to give effect to the provisions of section 47(1) as well as to the provisions of section 47(3) of the Board's Rules, it is the Board's usual practice to grant an adjournment in order to give to the party making the allegations an opportunity to comply with the provisions of section 47(1) of the Rules."

7. Having therefore carefully reviewed the circumstances in these cases and taking into account the principles above cited, the Board directs that prior to the continuation of hearing of this matter, the applicant shall file further particulars with respect to its allegations namely that is to say, the applicant shall set out the specific section or sections of The Labour Relations Act alleged to have been violated by the respondent in these proceedings.

8. The matter is referred to the Registrar.

5225-73-R: Margaret Wark, on behalf of herself and other employees of Parker's Dye Works & Cleaners Limited, Toronto, carrying on business under the name of Parkers The "Spick & Span" Cleaners" (Applicant) v. Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Respondent) v. PARKER'S DYE WORKS & CLEANERS LIMITED, TORONTO (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

DECISION OF THE BOARD: December 3, 1974.

1. This is an application under section 49(2) of The Act for termination of the respondent's bargaining rights. The Board's decision dated July 4, 1974, delineated the matters that appeared to remain outstanding with respect to the ultimate disposition of the instant application. More particularly the Board indicated that...

"Under section 49(3) of the Act the Board is required to ascertain the number of employees in the bargaining unit at the time the application was made and whether or not less than 50 per cent of the employees in the bargaining unit have voluntarily signified in writing...that they no longer wish to be represented by the trade union..."

2. The respondent at the initial hearing challenged the lists filed by the intervener herein alleging that a number of persons employed by the intervener were properly members of the bargaining unit in that they did not exercise managerial functions under section 1(3)(b) of the Act. Both the applicant and the intervener asserted that the challenged persons were properly excluded from the collective agreement because their duties and responsibilities fell into the managerial category. In any event, the applicant particularly argued without prejudice to its position on "the managerial issue" that the respondent by virtue of its past treatment of the disputed persons were estopped from submitting that said persons

were members of the bargaining unit defined in the scope clause of the collective agreement even though they may very well be employees for purposes of the Act.

3. The examiners subsequent to the decision of July 4, 1974, continued their inquiry into the duties and responsibilities of the disputed persons. As a result thereof and the written agreement of the parties dated September 25, 1974, the Board proposes to deal with the issues on the premise set out in that agreement. That is to say, we will proceed to deal with the managerial question and the "estoppel argument" will be held in abeyance pending the results of that determination.

4. The Board notes that all written representations with respect to the managerial question were received by October 30, 1974, in accordance with the parties' agreement. The Board further notes the parties agreement to waive a hearing with respect to this issue.

5. The Board notes the agreement of the parties that the evidence of Audrey Martin as set forth in the Examiner's Report shall be representative of herself and all other persons classified as store manager and specifically referred to in Schedule "B" of the challenged list of employees.

6. Mrs. Audrey Martin has been employed by the intervener for three years. She has held the position of store manageress for some seven years under three different managements. Three employees engaged as store clerks in the intervener's depot outlet work under her immediate supervision. Mrs. Martin indicated that she had the power to hire and fire and indeed hired the three clerks heretofore referred to. She indicated that the occasion has yet to arise where her powers to fire required to be exercised. In this regard she indicated that if an employee refused to carry out her instructions "she didn't think she would have them working for her." The extent of her supervisory duties in this particular regard has not as yet transcended the "correcting stage" of their work performance. The employees referred to are part time employees who initially worked a probationary period of two weeks after which time "if they were no good she wouldn't keep them." In describing her job in context of the store clerks Mrs. Martin stated that she is responsible for shipping and receiving and hire and fires. She "switches hours although she is not responsible for promotions and transfers." She is responsible to see that the work (cleaning) is in good condition when it comes back from the plant. She looks after the cash, deposits it in the bank, checks the time cards, she schedules holidays and sees that the store is kept in neat order. She also looks after customer complaints. In performing these functions, the evidence indicated that her immediate supervisor, Mr. Watton only attends the store once in six weeks to inquire into the operation.

7. Mrs. Martin indicated that her assigned duties consumed approximately two hours per day. She earns 30¢ an hour more than the store

clerks over whom supervisory duties are exercised. Unlike store clerks she is not docked for time off due to illness. The rest of her day is spent servicing customers like the other store clerks.

8. In determining whether Mrs. Martin exercises managerial functions, we are satisfied that she as store manageress is in charge of the operation of the intervener's retail outlet. To the extent that managerial responsibilities are required in servicing the depot store Mrs. Martin exercises them. Aside from the apparent power to hire employees (which is not standing alone dispositive of the issue) we are satisfied that in the absence of more immediate scrutiny by the intervener's managerial staff, sufficient discretion is conferred to enable her to make decisions incidental to the operation of the intervener's business. We therefore cannot agree with the respondent's contention that "the simple management prerogative seen to be exercised by Mrs. Martin involved her ability to hire part time employees at the subject store." On the contrary she is in charge of the operation of the store and this inherently may create conflict situations with other employees where managerial powers may be exercised. The Board cannot disparage responsibilities that are integral to the business operations of the intervener having regard to the organizational structuring of the intervener's retail outlets. We find therefore, that Mrs. Martin exercises managerial functions within the meaning of section 1(3)(b) of the Act. (see; The Chateau-Gai Wines Limited Case OLRB M.R. March 1970 1444 at page 1446; The Richardson, Bond and Wright Case OLRB M.R. March 1965 638; Canadian Blower and Forge Company Limited Case November 1974 Board File No. 5966-74-R).

9. The Board notes the agreement of the parties that the evidence of Inga Von Heymann as set forth in the Examiner's Report shall be representative of herself and all other persons classified as "production manager" and specifically referred to in Schedule "B" of the challenged list of employees.

10. Mrs. Von Heymann indicated that she has been employed in the position of production manager for some fourteen years in three "unit stores". Mr. Chris Morin, district manager, is her immediate superior. She has approximately 10 employees who work under her immediate supervision and include a counter manager, an assistant production manager, one presser, two shirt pressers and five counter clerks. She indicated that she possesses the power to hire and has indeed hired employees on the recommendation of the counter manager who does the interviewing of prospective employees. With respect to the power to fire, the witness indicated that "when someone is not efficient she lets them go or when production is down, she lets the weakest one go. With respect to the "input" of Chris Morin, the witness stated that "if she couldn't get help she would ask him." The present counter manager was a transfer from another store but she was responsible for hiring the present assistant counter manager and the assistant production manager. She indicated

that she is not involved in transfers or promotion to higher rated jobs. With respect to granting wage increases, Mrs. Von Heymann stated that this was governed by the existing union contract. She assigns overtime, and determines work schedules within the hours preset by higher management. She signs time cards after being checked for accuracy by the counter manager.

11. She has attended management meetings in the past with respect to problems of production. She looks after customer complaints and attends to breakdowns in machinery. Unlike other employees she is paid a salary when off sick and is entitled to three weeks vacation. She doesn't get paid for overtime work. Mrs. Von Heymann would spend more than half her time at the machines and "the other portion would be training persons like Mrs. Kennedy, a new assistant production manager, a new counter girl, a new shirt presser and...girls in every job."

12. We are satisfied having regard to the evidence and the reasoning of the Board in Paragraph 8 herein that Mrs. Von Heymann exercises managerial functions. It is suggested by the respondent that Mrs. Von Heymann "was restricted to ... routine, predetermined and limited functions of the dry cleaning machine located at the store premises". We cannot agree that the evidence supports this position. Rather, the evidence sufficiently indicates to us that, having regard to the extent of her duties and responsibilities with respect to other employees, Mrs. Von Heymann would inevitably be placed in a conflict-choice dilemma if not excluded from the bargaining unit by operation of section 1(3)(b). In our view the functions performed by Mrs. Von Heymann closely approximates the nature of the duties and responsibilities outlined in the Richardson, Bond and Wright Limited Case OLRB M.R. March 1965 638 at p. 639;

"...While it is true that there are other managerial functions such as hiring and firing exercised by other persons in management, the fact that the other managerial functions are not exercised by Mr. Haston in no way detracts from the managerial functions which he does exercise and we are therefore impelled to find that he is not an employee of the respondent included in the bargaining unit."

13. The Board notes the agreement of the parties that the evidence of Evelyn Chancey as set forth in the Examiner's Report shall be representative of herself and all other persons classified as "counter manager" and specifically referred to in Schedules "B" of the challenged list of employees.

14. Mrs. Chancey has been advised by management that "she was the counter manager with the right to hire and fire, to look after time

sheets and claim forms and make up holiday schedules." Questioned with respect to her powers to hire, Mrs. Chancey indicated that "she told Mr. Minnott (the production manager) that she needed a new girl and that she was hiring one and that he had said fine". In the fifteen months she has been a counter manager, Mrs. Chancey has yet to deal with situations that justify the discharge of employees. Furthermore she has never been involved in any disciplinary action which required a penalty of sending someone home or docking time. Nor has she been involved in the transfer or promotion of employees and is restricted by the collective agreement with respect to recommending wage increases.

15. It appears in matters of substance with respect to employee relations Mrs. Chancey relies on persons of higher management rank for advice. She initially stated that her immediate supervisor was Jim Minnott the production manager but later suggested that both she and the production manager were on an equal footing. We are satisfied however that Mrs. Chancey's responsibilities fall short of the duties and responsibilities exercised by a managerial person. The evidence indicates that in matters of substance control is exercised by the production manager with respect to ultimate responsibility in making decisions. Although we are satisfied that Mrs. Chancey exercises supervisory duties over other employees such as granting overtime, scheduling work, and filling vacancies due to absenteeism, nonetheless such responsibilities do not justify a positive finding under section 1(3)(b) of the Act. (see; The Great Atlantic and Pacific Tea Company Limited Case OLRB M.R. July 1969 428 at p. 483).

16. The Board notes the agreement of the parties with respect to Edith Wright classified as assistant manager, Margaret Stewart classified as assistant counter manager and Yosh Yomashita, classified as assistant production manager and V. Cornevale classified as supervisor-instructor as being representative of themselves and the particular classification of employee specifically referred to on Schedule "B", of the challenged list of employees. The Board is satisfied having regard to the evidence and the provisions of section 1(3)(b) of the Act that Edith Wright, Margaret Stewart, Yosh Yomashita and V. Carnevale do not exercise managerial functions nor are they employed in a confidential capacity in matters relating to labour relations.

17. Mr. Joseph Lamb has been employed for the past twenty-six years as supervisor of the tailoring department located in the intervenor's main plant at Rexdale. His immediate superior is Mrs. Mraud who supervises the whole plant. Mr. Lamb stated that he does the hiring of the tailors after placing advertisements in the newspapers. There are four tailors presently working for Mr. Lamb who are paid on the basis of fifty per cent of the amount billed a customer. All perform their work at home with one exception who works in the plant three hours per day. Mr. Lamb indicated he had the power to dismiss but the occasion has yet to arise where that power required exercising.

18. In describing the hiring process Mr. Lamb stated that once a reply was received from an ad he would invite the applicant for an interview. He would ask whether they could do work at home and would give them two or three garments to start with to see what their work was like. If he was not satisfied with the work, he would dispense with their services. The last tailor hired by Mr. Lamb was some six months prior to these proceedings. All hiring is done without consultation from other members of management.

19. Mr. Lamb determines the work that will be sent the tailors engaged by him. He maintains a filing system recording the garment that required repairing, the amount billed and the particular tailor responsible. Mr. Lamb also indicated that if a customer was dissatisfied with the repair work he had the authority to make the necessary price adjustments. Mr. Lamb also has unrestricted authority to make necessary purchases of supplies used by the tailors. Mr. Lamb confirmed that he would also adjust the billings in accordance with the escalating costs of tailoring materials. In describing the scope of his authority under Parker management, Mr. Lamb indicated that "he had merely been told to carry on as before." His job has remained unaltered since having been made the supervisor of the tailors.

20. We are satisfied that Mr. Lamb exercises managerial functions within the meaning of section 1(3)(b) of the Act.

21. Mr. Max Marmer has occupied the position of supervisor-expediter for the past eighteen years. His immediate superior is Mr. McGilvray, Vice-President. He also reports to Mr. Morin a supervisor manager and from whom Mr. Marmer would take most of his directions. Mr. Marmer said he has about 175 employees under his direction and supervision including managers, pressers, shirt washers and shirt finishers all of whom are employed in the twenty-eight stores located in Metropolitan Toronto. Mr. Marmer indicated that he has authority over store managers and is senior to them. With respect to the hiring process Mr. Marmer indicated that he would interview a prospective employee and would then recommend the employee to either Mr. Morin or Mr. McGilvray for the final decision. Indeed, "he himself could start a man to work and report later to the office that he had hired a man." The employee would be paid in accordance to a scale "not established by him." Mr. Marmer also indicated an incident where he fired a store manager on his own authority. He recited that he was displeased with the particular manager's job performance and reprimanded him prior to ultimately effecting the discharge. Once having reported the firing to the office, the store manager left the following day.

22. Mr. Marmer described his function not so much in terms of supervising store outlets but overseeing them to assure that their operation was conducted without problems. For example, if a store was short staffed "he may spend some time in helping out the store." Mr. Marmer attends

management meetings along with Mr. McGilvray, Mr. Morin and Mr. Watton another supervisor. They discuss the quality of the intervener's service and advertising policy. He could not recall that confidential matters had ever been discussed.

23. Although Mr. Marmer's base point is the main plant in Rexdale, he travels from store to store in the course of discharging his job responsibilities. When at the main plant, the witness expedites the delivery of goods to the stores and determines the reason for hold-ups in such deliveries. At the particular store level, Mr. Marmer would straighten out problems in consultation with the store manager with respect to the servicing of customers. Generally speaking, "his main function is to see that the stores are operating properly."

24. In this regard should a store require staff Mr. Marmer indicated that he had the authority to recommend transfers and promotions from one store to another. He indicated that he would approach an employee and ask that employee whether he was interested in filling a particular job vacancy at another store that could very well be a higher position. Once the recommendation was made the transfer or the promotion would be effected. It was Mr. Marmer's experience that a recommendation had never been rejected by either Messrs. Morin or McGilvray.

25. The Board is satisfied that Mr. Max Marmer exercises managerial functions within the meaning of section 1(3)(b) of The Act.

26. The Board is further satisfied that Grace Milando classified as supervisor and examiner, Sylvia Green supervisor - shirt department, Kenwin Morris classified as sales manager and Bernard O'Brien classified as a clerk do not exercise managerial functions within the meaning of section 1(3)(b) of the Act.

27. It appears that assuming without finding that the persons found herein to be employees for purposes of the Act are members of the bargaining unit covered by the expired collective agreement filed in the instant application the applicant has satisfied the Board that not less than 50 per cent of the employees in the bargaining unit have signified in writing a desire to terminate the respondent's bargaining rights. It will therefore be unnecessary for the Board to entertain representations with respect to the applicant's "estoppel argument" (see paragraph 3 herein).

28. The Board in paragraph 12 of its decision dated July 4, 1974, indicated "that the statement of desire filed in support of the instant application is a true and voluntary reflection of the desires of the signatories thereto and the reasons for making this finding will issue in due course." The Board therefore proposes to provide such reasons accordingly.

29 In November 1972 Mr. Keith Coutlee, a business representative for the respondent trade union, approached a number of members in the bargaining unit with a view to giving them tickets for the respondent's annual Christmas party. Both Mrs. Wark and Mrs. Alford were present. Mr. Coutlee's appearance precipitated a conversation with respect to employee complaints pertaining to the quality of representation conferred members of the bargaining unit by the respondent in its dealings with the intervener employer. Mrs. Wark appears to have aired a particular personal grievance which Mr. Coutlee undertook to resolve. Subsequently, Mrs. Wark indicated that it was extremely difficult to contact Mr. Coutlee with regard to the discharge of the undertaking made to her. Eventually, upon being contacted Mrs. Wark was informed that many of the problems aired to him would have to await the expiry date of the existing collective agreement when negotiations with a view to renewing the existing contract would commence. In any event, this particular event in November 1972 appears to have sparked a desire amongst this particular group of employees to do something about the unsatisfactory service conferred by the respondent. Indeed, upon exploring other employees' attitudes towards the respondent, a consensus of getting rid of the respondent as bargaining agent appears to have formed. Mrs. Alford, at this time assumed the responsibility of organizing the effort to achieve this purpose. At this juncture, however, the filing of an application for termination had to await the expiry of the collective agreement in March, 1974. In the interim, the Board is satisfied that the employees simply curbed their frustration with respect to continued representation of the respondent. We are further satisfied that it was at this juncture that the idea originated to terminate the respondent's bargaining rights.

30. The Board proposes to deal with the respondent's argument wherein it was submitted that the quality of representation is immaterial to the issue of the voluntariness of the petition filed in support of an application for termination of bargaining rights. In this regard, a number of grievances were repeated by the witnesses called by the applicant in adducing evidence with respect to the origination, preparation and circulation of the statement of desire. The Board does not propose to detail these complaints except to the extent of cataloguing them in the following manner. The respondent never appointed a union steward to attend to routine representation matters; a business agent could never be located with a view to having bargaining unit complaints dealt with; union meetings were never called for the purpose of soliciting views with respect to dealings with the employer such as the ratification of negotiated settlements; no election of officers took place in accordance with the respondent's constitution; indeed no constitutions were distributed member-employees of the bargaining unit. It was also disclosed that copies of collective agreements containing terms and conditions of employment were denied affected employees in the unit. Indeed, the respondent confirmed this, in argument, when it was submitted that the Board should question the voluntariness of the statement of desire having

regard to the source where employees obtained the necessary information with respect to filing a timely application. An example of employee frustration was exemplified by one witness who indicated that every time a pay envelope was opened, the issue perplexing her most was attempting to attach some value to the monies deducted from wages in the way of membership dues. The evidence before this Board, including the evidence called by the respondent through its witnesses confirmed the pervasive dissatisfaction by employees with respect to continued representation by the respondent trade union.

31. The issue before this Board under section 49(3) of the Act is determining the "voluntariness" of the signification in writing filed in support of the desire to terminate the respondent union's bargaining rights. We are of the view that this Board would be defeating the objective of employee rights under the Act to suggest that the quality of representation of an incumbent trade union is not material to a voluntary expression to terminate an association with an inadequate bargaining agent. That is to say, the Labour Relations Act safeguards the freedom of employees to join a trade union and participate in its lawful activities. The certification process is the vehicle provided under the Act wherein the representative capacity of a trade union may be tested. In a like manner the Act safeguards the freedom of employees to disassociate themselves from a trade union that has fallen into disfavour. The termination of bargaining rights provisions is the vehicle designed to give expression to this desire. In either instance the Board's concern is that rights be preserved through the voluntary expression of employee desires. And the quality of representation conferred or to be conferred is one factor integral to measuring the authenticity of that desire.

32. The respondent offered a number of arguments as to why the Board should reject the statement of desire filed herein as not being a voluntary expression of employee wishes. The evidence adduced before us indicated that at the appropriate time Mrs. Alford along with a group of employees approached Mr. Mraud, an employee of some seniority in the intervener's service. Mr. Mraud is employed as a presser and is a member of the bargaining unit described in the expired collective agreement. He is also the husband of the manageress of the intervener's main plant in Rexdale. It appears upon being approached Mr. Mraud shared the employees' desire to get rid of the respondent trade union. He gave the employees the name of his personal solicitor and suggested that they contact him. Mr. Mraud indicated that the particular solicitor closed the real estate transaction with respect to his present home and performed other sundry solicitors duties for his family. Upon contacting counsel, the employees were told he was inexperienced in labour law matters and therefore would not be able to service them adequately. Counsel thereupon referred them to Mr. Horan whom the employees ultimately retained to represent them.

33. Upon counsel's advice Mr. Mraud was instructed thereafter, because of his delicate situation to dissassociate himself from further participation in the effort to organize a petition. Mrs. Alford thereupon appears to have continued her role as the chief organizer and prepared, on counsel's advice, the strategy for approaching employees' with respect to securing their signatures to a statement of desire. To this end a committee was formed consisting of Mrs. Alford, Sophie Thomas, Edna Browning, Evelyn Sheahan and Margaret Wark. The interveners' retail outlets throughout Metropolitan Toronto were divided into four sections and each member of the committee was allotted a number of stores to canvass. The strategy with respect to securing employee signatures appeared to follow the same pattern. An organizer would enter a store either during employees' coffee break or lunch hour (and often it was suggested that it was an appropriate time for such a break). The employees would meet one at a time outside the store where the purpose of the petition was explained and the signature, if provided, was secured. There was one instance related to the Board where a language difficulty was encountered in explaining the purpose of the petition and it was therefore necessary to obtain a translator at a later date for that purpose. Later upon the purpose of the petition being explained, the particular employee penned her signature to the document. Upon the return of one clerk to the store another followed until all had had an opportunity to participate in the campaign. Canvassers were either members of the committee or other employees in the unit who volunteered their services in support of the cause. Some, such as Mrs. Alford exercised stealth in securing time off from work for some fictitious purpose and others, such as Mrs. Thomas contributed her day off in order to approach the employees in the unit. In most cases, the Board is quite satisfied that a sufficient degree of discretion was exercised by the canvassers in accordance with counsel's direction, to avoid any interference by management personnel in the campaign. There was one particular incident involving the Yorkville Store where a store manager appears to have gotten wind of the campaign but the evidence indicates there was no actual (tacit or otherwise) influence exerted upon the employees' efforts. Indeed, throughout, the campaign to canvass these stores, the organizers appear to have exercised the type discretion that a reasonably discrete business agent would exercise in securing membership cards pursuant to a campaign to organize employees with a view to applying for certification.

34. Organizing employees at the intervenor's main plant at Rexdale was a particularly delicate obstacle in the way of the applicant's efforts to secure signatures to the statement of desire. Mrs. Alford and Mrs. Wark attested to the strategy adopted to secure these signatures. It appears that both Mrs. Alford and Mrs. Wark arranged for a meeting of employees at the coffee shop in the Cambridge Hotel during the morning break of February 8, 1974. It was the usual practice for employees to purchase their coffee from a caterer's truck that attended the intervenor's premises at approximately nine o'clock each morning. A telephone call was

made to the caterer requesting that the truck not show up on the morning of February 8th. Then through word of mouth the message was relayed to employees that they were to attend a meeting at the designated time and place. On the morning in question it appears that employees by foot and by car proceeded to the Cambridge Hotel. Coffee was purchased by Mr. Mraud for all the employees at which time Mrs. Wark explained the purpose of the petition and passed it around to employees for their signatures. Mrs. Wark testified that she witnessed each of the employees' in attendance sign the document and penned her name beside their signatures afterwards. The entire process consumed approximately twenty to thirty minutes time. Usually fifteen minutes is allotted by the intervener for the morning break. In this regard employees did not have any monies deducted from their pay envelope for the excess time spent on their break that morning. Nevertheless, Mr. Annette testified that in the past when a lengthy break was taken by him he had not had any monies docked from his pay.

35. The respondent's argument is basically two-fold with respect to the voluntariness of the statement of desire. Firstly, it is suggested that the document is tainted having regard to Mr. Mraud's participation in the origination and circulation thereof. Mr. Mraud is the husband of the plant manageress at Rexdale. The extent of the evidence relating to his participation in the securing of the signatures to the statement pertained to his recommendation of a solicitor and his escorting of employees to the coffee shop in the Cambridge Hotel on the morning of February 8, 1974. There was also the evidence of Mr. Coutlee who attested to the fact that the respondent's records indicate that Mr. Mraud was placed on the dues deduction list a few months prior to the filing of the instant application. In other words, the submission is made that the circumstances of Mr. Mraud's participation should raise a sufficient doubt in the Board to question the authenticity of the statement of desire.

36. We reject this submission on the following grounds. Mr. Mraud is a legitimate member of the bargaining unit entitled to participate in and be exposed to the full fulcrum of the rights and privileges provided under The Labour Relations Act. In this regard, we note that Mr. Mraud's name did not appear amongst the respondent's challenges to the interveners' lists filed herein. In other words, having regard to the agreement of the parties dated September 25, 1974, the Board included Mr. Mraud as a member of the bargaining unit for purposes of the count. And we can only infer that the placing of Mr. Mraud's name on the lists for deduction of dues was an obligation assumed by the intervener in accordance with the terms of the collective agreement. Furthermore, having regard to the evidence adduced through Mr. Coutlee we are satisfied that the intervener's failure to do so in the past is merely one instance amongst many others of the respondent's laxness in protecting its rights under the union security provisions contained in the expired agreement. With respect to the inferences to be drawn from Mr. Mraud's relationship to a person holding a managerial position, the Board cannot thereby impute an improper purpose

by the intervener from this fact alone. We have no misgiving in finding that Mrs. Mraud knew of the organizing by employees to terminate the respondent's bargaining rights. Nor do we hesitate to hold that the intervener would welcome the prospect of a successful termination application by the employees in the bargaining unit. We do not find, however, that Mr. Mraud by reason of his wife's position has given rise to a suspicious circumstance casting doubt on the voluntary desires of employees in the bargaining unit.

37. The second submission put forward by the respondent pertains to the overall impact on employees' desire having regard to the manner in which the document was circulated. That is to say, the inference should be drawn that, indeed, the statement was circulated on the intervener's time and on its premises. More particularly, reliance in support of this argument is made with respect to the procedure adopted by the applicant in canvassing the retail stores and the overextended coffee break conferred with regard to the meeting of February 8, 1974. The Board, of course, has often gone on record for holding that mere organization of a petition on employer premises and employer time is not in itself cause to set aside an otherwise voluntary statement of desire. (see; Pyrotenax of Canada Ltd. Case 60 CLLC ¶16,170) Nor will mere knowledge by management of the securing by employees of a statement with a view to terminate an incumbent union's bargaining rights justify the raising of an inference of employer influence (see; The Cooper-Weeks Limited Case OLRB M.R. August 1967 455). Indeed, the origination, preparation and circulation of a petition in support of an application for termination may very well take place on company premises and with the knowledge of management but so long as the Board is satisfied that the statement filed is "a voluntary expression" of employee desires, the Board will give effect to the statement. (see; The Data Business Forms Limited Case OLRB M.R. February 1974 63). The Board's concern in inquiring into the origination, preparation and circulation of a statement of desire is that it be satisfied on the basis of first hand evidence that the voluntary wishes of employees in the bargaining unit have been reflected. (see; The Remington Rand Limited Case OLRB M.R. March 1963 535). We are satisfied, having regard to the evidence pertaining to the origination of the employees' desire to terminate the respondent's rights and the procedure adopted to effectuate that desire, that the statement of desire was a voluntary expression of employees in the bargaining unit.

38. The Board is satisfied on the basis of all the evidence before it that not less than fifty per cent of the employees of Parker's Dye Works & Cleaners Limited, Toronto in the bargaining unit, at the time the application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent union on March 5, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have

voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 49(3) of the said Act.

39. The Board directs that a representation vote be taken of the employees of Parker's Dye Works & Cleaners Limited, Toronto. Those eligible to vote are all employees of Parker's Dye Works & Cleaners Limited at its plant and branches in Metropolitan Toronto and Brampton, save and except foremen or supervisors, persons above the rank of foreman or supervisor, office staff, drivers, students employed during the school vacation period and persons employed for not more than twenty (20) hours per week, on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

40. Voters will be asked to indicate whether or not they wish to be represented by the respondent in their employment relations with Parker's Dye Works & Cleaners Limited, Toronto.

41. The matter is referred to the Registrar.

6316-74-R: Ontario Nurses' Association (Applicant) v. SUDBURY MEMORIAL HOSPITAL (Respondent).

BEFORE: D.E. Franks, Vice Chairman, and Board Members P.J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Michael E. Royce for the applicant; K.R. Valin, Mrs. S. Beach and R. Krizanc for the respondent.

DECISION OF D.E. FRANKS AND P.J. O'KEEFE: December 4, 1974.

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2. On September 12th, 1974, the Board appointed an examiner to inquire into the composition of the bargaining unit and the lists of employees thereon. In due course the examiner convened a meeting of the parties and at the first meeting of the parties commenced the proceedings by showing the applicant the lists of employees in Schedules A, B, and D, filed by the respondent. The respondent objected to this manner of proceeding. That objection was overruled by the Examiner and the inquiry continued. Before dealing with the Report of the Examiner herein, we propose to comment on the objection by the respondent to that manner of proceeding. The actual objection of the respondent is that the examiner "without consultation with or agreement from the respondent and without specific instructions from the Board gave copies of Schedule A, B and D to the applicant union for their perusal and verification." As a result of proceeding in this matter the respondent made the following requests:

- 1) the Board rule that the procedure assumed by the Examiner is improper and contrary to the Act;
- 2) the Examiner be requested to determine the list as directed by the Board which has not as yet been performed by the Examiner;
- 3) the Application for Certification be dismissed as the procedure adopted by the Examiner, an employee of the Labour Relations Board, is contrary to the established practices of the Board and contrary to the Act and has prejudiced the respondent.

3. We fail to see why the procedure adopted by the Examiner in this matter is contrary to either established practices or contrary to the Act as suggested by the respondent. Indeed, the procedure adopted by the Examiner has been used for many years by the Board's examiners when certain areas of the lists of employees are in dispute. It is, of course, necessary for both sides to know the position of the other side before the actual issues in dispute before the Examiner can be delineated. Thus, when the examiner shows the lists of employees in the various schedules to an applicant trade union, this is simply a method of conveying the respondent's position on the list of employees to the applicant trade union. To suggest that this can be done in some other way is simply not practical. The objection of the respondent to the procedure adopted by the examiner is therefore denied.

4. The examiner has issued his report on the lists and composition of the bargaining unit and the parties have made their representations in writing thereon. Neither party has requested a hearing to deal with the report of the examiner. On the basis of the report of the examiner and the representations of the parties thereon we are of the view that the perfusionist, the persons employed as nurse technicians, the teaching nurse of the Diabetic Day Care Centre and the person classified as special procedure nurse should be included in the bargaining unit.

5. The Board therefore finds that all Registered and Graduate Nurses in the employ of the respondent save and except Head Nurses, persons above the rank of Head Nurse, Discharge Planning Officer, Health Nurses, the Director of Volunteers and persons employed for not more than 24 hours per week constitute a unit of employees of the respondent appropriate for collective bargaining.

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DECISION OF BOARD MEMBER J.E.C. ROBINSON: December 4, 1974.

I dissent in part, on the basis of the Report of the Examiner

and the representations of the parties thereon. I would not have included Mr. Henry Chaise, classified as Perfusionist in the bargaining unit.

6477-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. YORK LATHING LIMITED (Respondent) v. Marble Masons, Tile Layers, Terrazzo Workers Union No. 31 affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: A. Colafranceschi and D. Cairns for the applicant; R. D. Perkins and A. Iacobelli for the respondent; A. E. Golden and Pamela Sigurdson for the intervener.

DECISION OF THE BOARD: December 3, 1974.

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4. This application was filed on September 20, 1974. The applicant is seeking certification on behalf of a bargaining unit of painters and painters' apprentices in the Board's geographic area #8, save and except non-working foremen and persons above the rank of non-working foreman but with a clarity note to include drywall tapers.

5. The respondent and the intervener take the position that the employees affected by this application are drywall tapers and are covered by an alleged collective agreement between them which was entered into on June 7, 1974. The applicant adopted the position that this alleged collective agreement was secured as a result of voluntary recognition and that the intervener was not, at the time the alleged collective agreement was entered into, entitled to represent the employees in the bargaining unit. The applicant asked the Board to make a declaration pursuant to section 52(1) of The Labour Relations Act that the intervener was not, at the time the alleged collective agreement was entered into, entitled to represent the employees in the bargaining unit. It was agreed that the alleged collective agreement was secured as a result of voluntary recognition of the intervener by the respondent.

6. Having regard to the representations of the parties, the Board ruled that because the alleged collective agreement was in its first year of operation the onus of establishing that the intervener was entitled to represent the employees in the bargaining unit at the time the agreement was entered into rested with the parties to the alleged collective agreement.

7. The parties agreed that on June 7, 1974, the date the alleged collective agreement was signed, the respondent employed three plasterers and between ten and twelve boardmen, that these three plasterers were members in good standing of the intervener and that none of the boardmen were members of the intervener.

8. Antonio Iacobelli, the president of the respondent gave evidence before the Board concerning the nature of the work performed by the three plasterers and the ten or twelve boardmen. Considerable argument was addressed to the Board on the wording of article 22 of the alleged collective agreement. This article deals with the work jurisdiction of the intervener. Article 22(a) reads in part "...the taping and pointing of all joints, nailholes and bruises on wallboard, regardless of the type of materials or tools used; also the setting in place of plasterboards,...".

9. Clearly the drywall tapers who form the subject matter of this application are covered by article 22 of the alleged collective agreement. In addition, the plasterers are clearly covered by the alleged collective agreement. Moreover, the wording of article 22(a) is broad enough to cover the boardmen. However, even if it may be said that boardmen are not arguably covered by article 22(a), the recognition clause contained in article 1(b) of the alleged collective agreement is broadly drawn and we find that article 1(b) purports to cover boardmen as well as drywall tapers and plasterers.

10. Article 1(b) states:

The Employers recognize the Union as the sole and exclusive bargaining representative for all employees in the employ of the Employers with respect to wages, hours and other terms and conditions of employment save and except non-working foremen and those above the rank of non-working foremen. (emphasis added)

11. The evidence before the Board discloses that at the time the alleged collective agreement was entered into the intervener represented only three out of thirteen to fifteen employees of the respondent. The intervener, therefore, was not entitled to represent the employees in the bargaining unit at the time the alleged collective agreement was entered into because it did not at that time represent a simple majority of the employees who were purportedly covered by the alleged collective agreement. Reference is made to the Spring Plastering Limited case, OLRB M.R. Dec. 1967, p. 887.

12. Having regard to the foregoing, the intervener ceases to represent the employees in the defined bargaining unit in the alleged collective agreement and such alleged collective agreement entered

into on June 7, 1974, between the respondent and the intervener ceases to operate forthwith in respect of the employees affected by this application.

13. Accordingly, this alleged collective agreement between the respondent and the intervener is not a bar to this application for certification.

14. The Board further finds that all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

15. For the purposes of clarity, the Board declares that drywall tapers are included in the bargaining unit.

16. The applicant filed evidence of membership of the type indicated at the hearing on behalf of eleven of the seventeen drywall tapers who were at work on the date of the making of this application.

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20. The matter is referred to the Registrar.

6813-74-R: United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. MR. SEAMLESS EAVESTROUGHING THUNDER BAY LIMITED (Respondent) v. Employees (Objectors).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: William Sherman for the applicant; D. I. Wakely and Peter J. Beseau for the respondent; no one appearing for the objectors.

DECISION OF THE BOARD: December 12, 1974.

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5. The applicant is seeking certification for a bargaining unit of carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora (Patricia portion included). The respondent opposed this application on two grounds. Firstly, that the persons affected by this application are not carpenters and secondly, that if these persons are performing the work of carpenters they are not employees of the respondent but are independent contractors.

6. The Board heard the representations of the parties on the first point and ruled that the persons affected by this application are carpenters. The Board then heard the evidence and representations of the parties on the second point. The evidence in this regard was provided by Mr. Peter Beseau, the president of the respondent.

7. The facts surrounding the relationship between the respondent and the two persons, Steve Czuzman and Tom Linklater, affected by this application are set forth below.

8. There is no written contract between the respondent and any of the persons who perform work for it. The respondent is based in the City of Thunder Bay and at the time of the hearing had between twenty-one and twenty-three persons performing work which originated with it. The respondent is essentially engaged in the installation of aluminum siding. The installation is accomplished by the labour of crews which usually consist of a team of two men. One of these men is called the leader and the other is called the helper. The leaders are the more experienced men and among the leaders the respondent has three "more stable" men with whom it has a special relationship. Of the two persons affected by this application, Steve Czuzman falls within the category of "more stable" men and Tom Linklater is a helper. The leaders own their own trucks and the crews are required to guarantee their work to the respondent for a period of one year. Some of the crews move from the respondent to other companies which install aluminum siding when the respondent is unable to provide them with work. However, the three "more stable" men have not been associated with such other companies. If the president observes shoddy work then he could tell the men concerned to take it down and start again. While the crews generally select their own partners, the president has, on occasion, initiated the pairing of a team.

9. The teams have their own trucks. Czuzman owns his own truck which he uses on the jobs performed for the respondent. While the truck is registered in Czuzman's name and he pays the insurance and the license, the respondent's name and telephone number appear on the truck. It was agreed between Czuzman and the respondent that the respondent's name and telephone number should appear on the truck for advertising purposes after the respondent had assisted Czuzman in the cost of painting and repairing the truck. The crews own their own tools which include two sets of ladders, ladder jacks, saws, hammers, shears, snips and drills. In addition, the men provide their own safety hats and safety gloves. However, the respondent leased and provided scaffolding for Czuzman and Linklater for use on the job in Kenora which forms the subject matter of this application.

10. The respondent purchases the aluminum siding, caulking and nails which the crews use in their work. The crews collect these materials and take them to their job sites. On occasions, though, the respondent delivers materials to the job sites in its own vehicles.

11. When the respondent currently offers to the crews the work of installing aluminum siding for a fixed price of \$35.00 per one thousand square feet within the immediate area of the City of Thunder Bay, Mr. Beseau described this as payment on a piece work basis. However, for the job in Kenora, the respondent paid his crew at the rate of \$43.00. Under questioning, Mr. Beseau explained that the \$8.00 differential was to cover the cost of driving the round trip of 700 miles and food and lodging. The respondent unilaterally sets the rate for the job and pays for Workmen's Compensation for all the persons who perform work for it. The respondent permits the three "more stable" men to draw an advance twice monthly and with respect to these three men only contributes on their behalf towards unemployment insurance and the Canada Pension Plan. In addition, the respondent, at the request of these three men, makes deductions on account of income tax. The respondent does not give vacation pay for any of the men who perform work for it.

12. The respondent issues separate cheques to the men who perform work for it. The amounts which the respondent pays to the men are in the ratio to which the members of each crew have agreed. Mr. Beseau again described the respondent's method of remuneration as payment on a piece work basis. Czuzman does not make any deductions from Linklater's cheques. The respondent withholds ten per centum of the sum due to a new man until his work is checked and approved by Mr. Beseau.

13. The question of determining which formula is to be applied in ascertaining whether, in the field of labour relations, a relationship is one of employment or of an entrepreneurial nature has been considered by the Board on many occasions. The test which has been applied by the Board is the four-fold test suggested by Lord Wright in Montreal v. Montreal Locomotive Works Limited [1947] 1 D.L.R. 161, 169: "(1) Control (2) ownership of the tools; (3) chance of profit; (4) risk of loss." In many cases the question can only be settled by examining the whole of the various elements which constitute the relationship between the parties. Reference is made to the Mo-Mek Systems Ltd. case, Board File #6221-74-R, decision dated October 7, 1974.

14. It appears that the persons affected by this application own their own tools. These persons are, according to the respondent, paid on a piece work basis. Moreover, in fixing the price for the job in Kenora, the respondent stated that the price differential was to cover the cost of driving, food and lodging. In our view, the respondent is, in effect, paying travelling expenses to Czuzman and Linklater. The payment of travelling expenses is not a usual aspect of the relationship which the respondent is urging on the Board. We find that Czuzman and Linklater receive payments from the respondent based upon their productivity in installing aluminum siding in a satisfactory manner. There is not, in our view, any chance of profit or loss in the commercial sense of

those words for these men. The payments which Czuzman and Linklater receive are wages based upon an incentive work scheme as opposed to an hourly rate for the job.

15. However, what is decisive, in our opinion, is the question of control. The fact that the respondent may have contravened certain federal and provincial statutes in its dealings with the persons affected by this application does not destroy the employer-employee relationship which we find exists between the respondent and Messrs. Czuzman and Linklater. The respondent exercises extensive control over the persons who are affected by this application. The respondent may direct these persons to repeat any unsatisfactory work. There is a ten per centum hold back of the money due to a new man until his work is approved by Mr. Beseau. The respondent has intruded itself into the repairing of a team by providing personnel. While the guarantee of one year may be viewed as an aspect of the relationship between the two contractors who deal at arm's length; the more convincing explanation in the context of the evidence before the Board is that this is a method used by the respondent to maintain the integrity of its operations and the standards of its work force in the absence of continuous supervision on the job sites.

16. Although duly served with notice of the hearing of this application, the objecting employees did not appear at the hearing. The Board is therefore not prepared to give any weight to the two statements of desire which were filed in opposition to this application.

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18. The Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

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20. A certificate will issue to the applicant.

6408-74-M: Victor Ledwith (Complainant) v. CANADIAN UNION OF GENERAL EMPLOYEES (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Victor Ledwith for the complainant; no one appearing for the respondent.

DECISION OF THE BOARD: December 11, 1974.

1. The complainant has complained to the Ontario Labour Relations Board that the respondent has failed, upon his request, to furnish him with a copy of the audited financial statement of its affairs to the end of its fiscal year certified to be a true copy by its treasurer or other officer responsible for the handling and administration of its funds contrary to section 76 of The Labour Relations Act.

2. The respondent did not appear at the hearing but in reply to the complaint it filed a copy of a letter it had sent to the complainant. The letter reads:

September 18, 1974

FILE NO: 6408/74/M

Mr. Victor Ledwith,
22 Bailey Crescent,
Aurora, Ontario.

Dear Sirs:

Enclosed please find a copy of our Audited Financial Statement for the fiscal year ended October 31, 1973. We regret that the current fiscal year's financial report will not be prepared until the end of October, 1974.

I agree that on several occasions, you did verbally request a copy of C.U.G.E.'s Financial Statement, however, you failed to request same in writing to the General Treasurer of the union, as was suggested to you by me on those occasions.

Further, you have stated that you presented me with a petition in February of 1974, requesting that our Financial Statement be supplied to some 33 members of the union. I would disagree with your statement in that this petition was never given to me, nor had I knowledge of its existence.

I am puzzled as to why you have waited some six months to take further action in this matter.

I would like to point out to you that under our constitution, any and all of our

members in good standing are entitled to a copy of our financial statement, however, requests for same should be made in writing to the General Treasurer of the union, not verbally to any of its elected representatives. In looking over your petition, I might add that I am unable to decipher the handwriting of most of the signatures, and therefore I am unable to forward financial statements to them individually.

I emphasize this, only to point out to you that any of the members who have signed your petition could have received copies of the Financial Statement long before 6 months, had they written to the Treasurer, given their names and addresses, and requested that copies of the Financial Statement be furnished to them.

I do not question your intent in requesting this Financial Statement, however, in view of your new position as President of the local under the Canadian Union of Public Employees, I trust this statement of the unions' affairs will not be used for the purpose of propaganda.

Should you require any further information concerning any of the unions' affairs, please do not hesitate to contact the undersigned in writing.

Yours truly,

Patrick Murphy,
General President.

c.c. Ontario Labour
Relations Board

3. The complainant says that he is not satisfied with the financial statement because it is not an audited statement.

4. The copy of the "Audited Financial Statement" said by the respondent to have been enclosed with its letter to the applicant dated September 18, 1974, was filed with the Board by the applicant. The statement consisted of two pages. On the first page appeared a Balance Sheet entitled:

Canadian Union of General Employees

Balance Sheet

As At October 31, 1973

On the second page a Statement of Revenue and Expenses appeared and it was entitled:

Canadian Union of General Employees

Statement of Revenue and Expenses

For the Year Ended October 31/73

And this second page was signed by J. Canning in the following manner:

I certify that this is the audited
financial statement for the year ended
October 31, 1973.

(signed) J. Canning

Joan Canning,
General Treasurer.

5. The complainant contends that this statement is not a certified true copy of an audited financial statement of the trade union's affairs to the end of its last fiscal year because it was not prepared by a registered firm of chartered accountants or at least there is no indication of this on the face of the document forwarded to him by the trade union.

6. The complainant drew the Board's attention to Article IX Section 4(h) of the respondent's constitution which reads:

Section 4 - The General Secretary -
Treasurer shall be the chief administrative
officer of the Union.

h. The General Secretary - Treasurer
shall have the books of the Union audited
each year by a registered firm of chartered
accountants selected by the General
Executive Board. Such audit shall be
furnished to the General Executive Board
and to the Convention, and any member in
good standing requesting same in writing.

7. Section 76 of The Labour Relations Act reads:

Every trade union shall upon the request of any member furnish him without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement to him, the Board may direct the trade union to file with the Registrar, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of such statement to such members of the trade union as the Board in its discretion may direct, and the trade union shall comply with such direction according to its terms.

8. In applying section 76 the Board is on record as saying that the provision does not entitle it to evaluate the completeness of a certified true copy of an audited financial statement of a trade union's last fiscal year; (see J.R. Convin [1968] OLRB Rep. 1113). Thus, in International Ironworkers Assoc. of Bridge and Structural and Ornamental, Local 736 [1968] OLRB Rep. 78, the Board described its jurisdiction as only "to obtain an audited financial statement and to furnish copies thereof to such members of the trade union as [it] directs".

9. But the financial statements must be audited statements and the treasurer or other officer responsible for the handling and administration of the trade union's funds must certify that the member has been given a true copy of the audited documents; (see International Union of Operating Engineers, Local 796 [1967] OLRB Rep. 910). Therefore in Canadian Union of Public Employees, Local 94, [1969] OLRB Rep. 1327, the Board found that "the document furnished to the complainant [was] not a true copy because it did not contain the first page of the audited financial statement". The first page contained the auditor's opinion and his methods of procedure which the Board ruled to be an integral part of the audited financial statement and should have been included in any true copy of the audited financial statement.

10. In the case at hand, the respondent's constitution provides that

the books of the trade union shall be audited by a registered firm of chartered accountants and yet there is no way of knowing whether the financial statements given to the complainant represent the audit in accord with that provision. The statements neither identify the firm of accountants nor document the opinion of the accountants in regard to the audit.

11. Admittedly the financial statements given the complainant are certified by Joan Canning, General Treasurer, as an audited financial statement for the year ending October 31, 1973. However, section 76 does not envisage the treasurer or other officer responsible for the administration of the trade union's funds certifying the statement to be an audited financial statement. Rather the section requires the officer to certify that what is given to the member is a true copy of an audited financial statement. The complainant has not been given an audited financial statement.

12. Therefore, having regard to the requirements of the trade union's constitution, and the principles outlined above, we find that the respondent has not complied with the provisions of section 76 of the Act.

13. The Board accordingly directs that the respondent file with the Registrar, not later than December 27, 1974, a copy of its audited financial statement (as requested by the complainant) verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds. The Board further directs that the respondent furnish to the complainant, by the same date, a copy of the audited financial statement together with a copy of the affidavit required to be filed with the Board attached hereto.

6559-74-R: International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States & Canada Local #F73, Toronto, Ontario (Applicant) v. WARNER BROTHERS DISTRIBUTING (CANADA) LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and P. J. O'Keeffe.

DECISION OF THE BOARD: December 11, 1974.

1. In its decision dated October 29, 1974 the Board directed that a representation vote be held wherein employees in the bargaining unit found appropriate in paragraph 3 of that decision were to be asked to indicate whether or not they wished to be represented by the applicant in their employment relations with the respondent.

2. In the ordinary course arrangements were made by the returning

officer appointed to proceed with the conduct of the vote. During the course of settling the voters' lists the representative of the applicant challenged the eligibility of three persons to cast a ballot namely; Audrey Lowery, Alfred E. Piggins and Mary Quinlan. It was alleged that Mr. Piggins exercised managerial functions and Miss Lowery and Miss Quinlan were employed in a confidential capacity in matters relating to labour relations.

3. The Board thereupon directed that the ballot box be sealed and the ballots cast by the persons challenged be segregated. No objections to the returning officers report dated December 6, 1974 were filed by the parties in accordance with the Board's Rules of Procedure with respect to the conduct of the vote. What remains outstanding, however, is the determination of the merits of the applicant's challenges. Both parties have submitted written representations on that particular issue without requesting that the Board direct a hearing.

4. In order to dispose of the issue the Board proposes to outline the procedure followed by the Board at the hearing held on October 18, 1974, in resolving the lists of employees for purposes of determining the count under S7 of the Act. The applicant at that time challenged the lists of employees filed by the respondent in reply to the application. More particularly Messrs. Norman Stern, Alfred E. Piggins and Max Schein were pinpointed by the applicant as being excluded from the bargaining unit because they either exercised managerial functions or were employed in a confidential capacity in matters relating to labour relations within the meaning of S1(3)(b) of the Act. At the hearing the parties agreed to proceed with the inquiry with respect to the duties and responsibilities of those persons challenged by the applicant. In this regard, it is noted that no other persons appearing on the respondent's schedules were challenged. Furthermore, it appears that both the names and classifications of Audrey Lowery and Mary Quinlan appeared on Schedule "A" of the lists filed by the respondent.

5. Counsel for the respondent proceeded to call Mr. Irving Stern, General Manager and President of the respondent's Canadian operations, to adduce evidence with respect to the duties and responsibilities of the persons particularly challenged. At the completion of Mr. Stern's testimony, Mr. A. Travers, representative for the applicant, withdrew his objections to the respondent's lists. The Board at that time announced that "the respondent's lists will stand."

6. In the representations made in writing by Mr. Travers with respect to the particular challenges to the voters lists no allegation is made that any changes in duties and responsibilities of those employees had occurred since the date of the Board's initial decision. In other words, there was no allegation made that the challenged employees were either promoted, transferred or otherwise dealt with to persuade us that their duties and responsibilities had altered to the extent that

they no longer were members of the bargaining unit found appropriate in accordance with the evidence before the Board at that time. As a result thereof, the Board is of the opinion that the applicant is bound by its agreement at the Board's hearing with respect to the list of employees determined in the manner set out in paragraph 5 herein. In short, we are of the view, that the applicant should not be permitted to renew its challenge to the employer's lists by withdrawing its representations made to the Board at the original hearing of the application. In disposing of this matter we direct the parties' attention to the Board's statement of policy recited in The Fonthill Lumber Ltd. Case 64 CLLC ¶16,305 at p. 1260;

"The Act clearly makes the determination of the appropriateness of the unit a matter for the discretion of the Board. It is obvious that the Board has always treated the desires of the parties as a very important, if not a crucial factor, in the exercise of this discretion. If the parties, who should know about their own affairs and what is good for them, agree that, for their own particular purposes, a certain bargaining unit described in language agreed to and understood by them, is appropriate for collective bargaining, or that certain employees because of their duties and responsibilities should or should not be included in a bargaining unit with other employees performing different duties and responsibilities, it is difficult in principle to conceive why their agreement should not receive paramount consideration in the determination or settlement of these matters. It seems to us that a particularly strong case for acceptance of an agreement is made out where the agreement resolves differences which, as in the instant case, fall within the category of matters which may be bargainable in the negotiation of a collective agreement. It is, of course, open to the parties, if they wish, to negotiate a collective agreement embodying a different bargaining unit of employees from what the Board itself might find or has in fact found to constitute an appropriate bargaining unit."

And further at p. 1261;

"Plainly, unless valid and compelling grounds exist in support of such action, it would be

contrary to the fundamental principles of fair dealing which should obtain between parties for one of them to be heard to repudiate unilaterally an agreement such as was made in the instant case. Moreover, of course, this Board should be reluctant to lend its sanction to any arbitrary and unilateral repudiation of the agreement."

7. In view of the foregoing, the Board finds that Mr. Piggins, Miss Lowery and Miss Quinlan are employees in the bargaining unit at the time the vote was held and accordingly are eligible to participate by casting a ballot as directed by the Board in paragraph 6 of its original decision.

8. The Registrar is directed to cause the ballot box to be unsealed and the ballots counted.

6727-74-R: National Association of Broadcast Employees and Technicians, CLC (Applicant) v. THE ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members F. W. Murray and P. J. O'Keeffe.

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: December 6, 1974.

1. The name "The Ontario Educational and Communications Authority" appearing in the style of cause of this application as the name of the respondent is amended to read: "The Ontario Educational Communications Authority".

2. The applicant has requested that a pre-hearing representation vote be taken.

3. It appears to the Board on an examination of the records of the applicant and the records of the respondent that not less than thirty-five per cent of the employees of the respondent in the voting constituency hereinafter described were members of the applicant at the time the application was made.

4. The Board directs that a pre-hearing representation vote be taken of the employees of the respondent in the following voting constituency:

All persons employed by the Ontario Educational

and Communications Authority as Director/Producers working in and/or out of Metropolitan Toronto.

5. During the course of the pre-hearing representation vote meetings, the respondent has taken the position that all of the persons as encompassed in the said voting constituency exercise managerial functions and are employed in a confidential capacity in matters relating to labour relations pursuant to the provisions of Section 1(3)(b) of the Act and that as such they are not "employees" within the meaning of the Act. In the alternative, the respondent submits that the appropriate unit for collective bargaining should consist of:

All Project Officers in the Educational Media Division of The Ontario Educational Communications Authority working in and/or out of Metropolitan Toronto save and except supervisors and/or managers and persons above the rank of supervisor and manager, and persons employed as Project Officers in Utilization as opposed to production, and/or in educational supervision who are ineligible to be Project Leaders.

The respondent requests that prior to the Board directing that a pre-hearing vote be taken in this matter, that the respondent be given a prior opportunity in the particular circumstances of this case, to make its submissions in this regard at a formal hearing before the Board.

6. The Board has carefully reviewed the submissions of the respondent, but applying the principles as set out in the recent decisions of the Board in the Sayvette Family Department Store Ltd. case (1974) OLRB Rep. 327 and the Dempsters Bread Division of Corporate Foods Limited case (Board File No. 5938-74-R), we are not prepared in the particular circumstances of this case to postpone the ordering of a pre-hearing representation vote. Accordingly, the request of the respondent is denied.

7. In addition to the respondent challenging the eligibility of all 39 persons whose names appear on the voters' lists filed in these proceedings, the applicant has challenged 16 of these names on the basis that these persons lack a sufficient community of interest in the proposed bargaining unit.

8. In these circumstances, the Board directs that all of the ballots cast during the course of the pre-hearing representation vote be segregated in the manner as outlined to the parties at the pre-hearing vote meetings convened by the Examiner in this matter.

9. The Board further directs that the Registrar serve by registered mail, the "Form 42" notice of the vote upon all 39 persons whose names appear on the voters' lists at the addresses appearing on the list to be supplied by the respondent for this purpose.

10. All employees of the respondent in the voting constituency on the 8th day of November, 1974, who have not voluntarily terminated their employment or who have not been discharged for cause between the 8th day of November, 1974 and the date the vote is taken will be eligible to vote.

11. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

12. The Registrar is directed to list this matter for hearing for the purposes of entertaining the evidence and representations of the parties with respect to all outstanding issues.

DECISION OF BOARD MEMBER F. W. MURRAY: December 6, 1974.

Having regard to the peculiar circumstances in this matter and to the disrupting effect that this vote would have upon the operations of the respondent, I would have directed that the Board postpone its decision ordering a vote in this matter pending an initial hearing concerning the respondent's submissions.

5889-74-R: Carpenters' District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. GROUP THIRTY THREE LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Harold F. Caley and Bill Morris for the applicant; Edward T. McDermott for the respondent.

DECISION OF THE BOARD: December 17, 1974.

1. The Board finds that Local Unions 27, 666; 681; 1133; 1963; 3227 and 3233 of the United Brotherhood of Carpenters and Joiners of America are trade unions within the meaning of section 1(1)(n) of The Labour Relations Act. The Board further finds that they are constituent unions of the applicant.

2. The Board further finds that the applicant is a council of trade unions within the meaning of section 1(1)(g) of The Labour Relations Act.

3. The Board is satisfied that the constituent trade unions of the applicant have vested appropriate authority in the applicant to enable it to discharge the responsibilities of a bargaining agent, pursuant to section 9(1) of The Labour Relations Act.

5. The applicant has applied for certification with respect to a bargaining unit of carpenters and carpenters' apprentices in the Board's geographic area #8. The applicant maintains that the two employees affected by this application are employed by the respondent. The respondent's position is that these two persons are not its employees but are rather employees of McNamara Corporation Limited, 271271 Ontario Limited, a joint venture.

6. The Board considered the representations of the parties and the Report of the Examiner dated August 28, 1974. At the hearing, the respondent for the first time adopted an alternative position. Even if, the respondent argues, it is the employer of these two employees, it is in the business of engineering consulting work project management and construction management and is not operating a business in the construction industry.

7. It is necessary for the Board to set out the evidence in considerable detail in order to fully appreciate the rationale of this decision.

8. On the date of the making of this application, June 14, 1974, Hjalmar Kuld and Jose Dacunha were employed as carpenters on the building project known as 100 Carlton Street in Toronto. Mr. Kuld was told when to start work on the project by Mr. Van Groll and his boss was Mr. John Hunt. He was paid by cheque on which appeared "Group Thirty Three". There was a sign at the building project on which appeared the names "Bovis", "Group Thirty Three" and others. Mr. Kuld identified a time card which was similar to his on which appeared the name of the respondent. These time cards were given to him by Klaas and stated "This time card must be signed at the end of each working day by the superintendent and submitted to him weekly. Failure to produce this card may result in withholding pay". The supervisor on the project was the person called Klaas and Mr. Kuld believed that Klaas was working for Group Thirty Three. Mr. Hunt and Klaas gave Mr. Kuld directions on the project.

9. Mr. Kuld received payment for work performed on the project by cheques which carried the name and address of the respondent thereon. Klaas signed his time cards on the project.

10. Mr. Dacunha was hired by Mr. Hunt who was believed by him to be his boss and to work for "Group Thirty Three". The name "Group Thirty Three" appeared on his pay cheques. Klaas, who was described by Mr. Dacunha as the superintendent, marked his hours and sent it to the office. The green notice to the employees which informed them of this application was brought by Mr. Hunt and posted by Mr. Kuld. Mr. Dacunha stated that Mr. Kuld worked for "Group Thirty Three".

11. Mr. John Hunt was called as a witness by the respondent. He stated that Group Thirty Three was engaged in engineering consulting

work, project management and construction management. This involves planning of projects, construction projects, in some instances the actual design of those projects, programming of working drawings, co-ordination of consultants, set-up of the job, calling of tenders and the drawing up of contracts. The contracts with the trades are prepared on behalf of the clients who may be owners or developers. The co-ordination includes co-ordinating the sub-trades. On the project in question Mr. Hunt gave evidence that the respondent entered into a contract with Bovis Corporation and McNamara and that Bovis is the holding company for McNamara. The respondent agreed to do the construction management on the project for Bovis and McNamara. This involved programming the project through the construction, the tendering of trades and drawing up contracts for the various portions of the work with the trades.

12. The respondent keeps a record of all the costs involved and the authorization of the invoices which are received from all the contracts or for work performed against a contract. The respondent arranges for payment on these contracts by the owner's agent. The owner's agent with respect to this project was RPA Consultants Limited (formerly known as Robinson & Heron Limited). The respondent presents the lowest tenders to RPA Consultants Limited, prepares a contract between the owner McNamara Corporation Limited, 271271 Ontario Limited, a joint venture, and the individual trades involved. The respondent performs this function on behalf of the owner and is paid a fee for this service. The respondent is registered as a consulting and construction management company.

13. The respondent was engaged by the owners to find employees to work on behalf of the owners. The respondent performed this task and obtained the services of a superintendent, Klaas Oosterhof. The respondent filed in evidence a purchase order with respect to Klaas Oosterhof. The unsigned purchase order is on the stationery of Group Thirty Three Limited and is dated May 7, 1974. Klaas Oosterhof is described as the "contractor" and above "McNamara Ltd. 271271 Ontario Ltd." appear the printed words "please invoice". The purchase order states:

Provide daily superintendent services including co-ordination of trades, ordering of materials, checking dimensions, keeping records and reports, control of quantities in accordance with purchase orders, drawings, details and specifications, responsibility for accuracy of construction and production scheduling. \$420.00 per week including 9% vacation pay plus \$10.00 per week car allowance. Client is also responsible for employee's portion of Canada Pension, Unemployment Insurance and Workmen's Com-

pensation, subject to latest Government tables.

Group Thirty Three Limited will prepare remittances for all payments to the various Government agencies and will be paid 5% administration fee payable upon submission of the invoices for this work. Upon commencement of employment Group Thirty Three Limited will verbally request R.P.A. Consultants Ltd. in advance for monies in respect to the above salary and will invoice for this salary at the end of each month.

14. Mr. Hunt gave evidence that the purchase order dated May 7, 1974, was signed by John Tattersall, the owner's representative, and by Klaas Oosterhof. Mr. Hunt explained that the respondent issued cheques for the salaries of Mr. Oosterhof, the carpenters and the labourers from monies paid into a bank by R.P.A. Consultants Limited and that such monies would come directly from McNamara.

15. Mr. Hunt stated that the respondent selected the carpenters who worked on the project and that the respondent acted upon the instructions of R.P.A. Consultants as the owner's agent. The witness also stated he was in charge of the carpenters, until Klaas Oosterhof arrived, and that in that capacity he was acting on behalf of the owner. He gave evidence that Mr. Oosterhof, in addition to supervising the carpenters and the labourers, generally ran the site including all the trades on the site. Mr. Hunt stated that Mr. Oosterhof had the power to fire men on the site, that any power equipment which the carpenters required would be rented and that McNamara would be invoiced for any such rentals.

16. The respondent did not carry any construction liability insurance with respect to the employees on the project. Such insurance was carried by McNamara Corporation Limited, 271271 Ontario Limited. The notice to the employees of this application for certification was signed and posted by Mr. Oosterhof at the request of Mr. Hunt. The two employees affected by this application were hired under a signed purchase order on the stationery of Group Thirty Three Limited. This purchase order is dated May 15, 1974 and the contractor is stated as Group Thirty Three Limited. Roger W. Bayley has apparently signed on behalf of Group Thirty Three Limited. No one has signed under the heading "Contractor's acceptance" and John Tattersall has apparently signed "for McNamara 27/5/74". The purchase order states:

Supply 3 labourers to the project at the following rates:

\$6.30/hour + 8% vacation pay + union
benefits + employer's portion of C.P.P.,
U.I.C. & W.C.

rates subject to Government and Union revisions.

Supply 2 carpenters to the project at the following
rates:

\$8.30/hour + 9% vacation pay + union
benefits + employer's portion of C.P.P.,
U.I.C. & W.C.

rates subject to Government and Union revisions.

Group Thirty Three Limited will prepare remittances
for all payments to the various Government agencies
and will be paid 5% administration fee payable
upon submission of the invoices for this work.
Upon commencement of employment Group Thirty Three
Limited will verbally request R.P.A. Consultants
Ltd. in advance for monies in respect to the
above wages and will invoice for these wages at
the end of each month.

17. The respondent prepared this purchase order on behalf of McNamara Corporation. The purchase order is then transmitted to RPA Consultants Limited who are described by Mr. Hunt as the "direct owner's agents". RPA Consultants are, according to Mr. Hunt, supposed to sign the purchase order on behalf of the joint venture. It appears that the two employees affected by this application did not sign this purchase order. Mr. Hunt stated that the purchase order was accepted on behalf of McNamara by John Tattersall of Group Thirty Three. The witness also stated that Mr. Van Groll in relationship with RPA Consultants Limited made the decision that Mr. Kuld was acceptable and that the witness in relationship with RPA Consultants Limited made the decision that Mr. Dacunha was acceptable.

18. Mr. Van Groll, who works for the respondent, and Mr. Hunt made the decision that Mr. Oosterhof was acceptable. The witness supervised the work of the carpenters for a time and was acting as the owner's agent. He is paid by cheque by the respondent and the stub of the cheque is similar to the stubs which were attached to the cheques which the two carpenters received. The respondent drew up agreements for the delivery of lumber to the project and the owner paid for the lumber.

19. Mr. Hunt thought that he could have dismissed Mr. Oosterhof in relationship with RPA Consultants Limited and that the latter could ask

that the witness be taken off the project. In re-examination Mr. Hunt stated that the men on the project would not have been engaged without the knowledge of RPA Consultants and that McNamara was ultimately responsible for paying the men.

20. The respondent prepared the tax slips for the two carpenters and paid vacation pay and union benefits. The income tax for the two carpenters is paid through the respondent's account with the government. Mr. Hunt stated that the monies for payment of taxes, wages and deductible items are sent from McNamara to RPA Consultants Limited. The latter, according to Mr. Hunt, then deposits that money in the respondent's bank on a weekly draw basis and the respondent does the paper work that allows these payments to be made to various branches of government, the union and other agencies.

21. Paragraphs eight to twenty inclusive contain the pertinent evidence of the relationship which exists between the two employees affected by this application and the respondent as contained in the Report of the Examiner. The Board notes that the alleged contract between the respondent and the various corporate entities was not produced before the Board.

22. The Board proposes to consider the evidence under two headings. Firstly, the nature of the relationship between Kuld and Dacunha and the respondent as perceived from the viewpoint of these two employees. Secondly, that same relationship as viewed from the vantage point of the respondent.

23. Kuld and Dacunha made contact with Van Groll and Hunt who are admittedly employees of the respondent. Kuld and Dacunha were supervised at various times by men who were either admittedly or apparently employees of the respondent. The cheques which were issued to Kuld and Dacunha purported to come from the respondent, were apparently based on time cards which were marked by Oosterhof. To all appearances Oosterhof was working for the respondent. There is no evidence that Kuld and Dacunha were informed that they were not working for the respondent. In these circumstances, Kuld and Dacunha would reasonably conclude, in our opinion, that they were employees of the respondent.

24. The respondent argues that notwithstanding the course of dealings between itself and Kuld and Dacunha their actual employees is McNamara Corporation Limited, 271271 Ontario Limited, a joint venture.

25. The relationship of master and servant is characterized by a contract of service, express or implied, between the master and the servant. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. Whether or not a particular contract is a contract of service is a question of fact, depending upon the terms of the engagement, the method of remuneration, and the power of controlling and dismissing

the workers, although none of these factors is by itself conclusive. (Halsbury's Laws of England, 3rd Ed. Vol. 25, pps. 447-8).

26. In the instant case, the consensual element, which is so necessary in the master and servant relationship, may only fairly be implied between Kuld and Dacunha on the one hand and the respondent on the other. There is no evidence before the Board to indicate that the respondent represented itself to Kuld and Dacunha as the agent of another employer. The contracts of service between Kuld and Dacunha on the one hand and the respondent on the other could not be transferred from one master to another without their consent and this consent is not to be raised by operation of law but only by the real consent of the men, express or implied. Reference is made to the decision of Denning, L.J., in Denham v. Midland Employers' Mutual Assurance, Ltd. [1955] 2 All E. R. 561, 564. There is nothing before the Board in the conduct of the respondent and Kuld and Dacunha to suggest that once the employment relationship was established there was any transference of their contracts of service to another master.

27. The relationship between Kuld and Dacunha, on the other hand, and the respondent, on the other, when viewed from the vantage point of the respondent, does not assist the respondent in its contention that Kuld and Dacunha were employees of McNamara Corporation Limited, 271271 Ontario Limited, a joint venture. It appears that the respondent is involved in a commercial relationship with the alleged employer and R.P.A. Consultants Limited. The purchase order dated May 15, 1974, was apparently signed by Roger W. Bayley on behalf of the respondent. However, the respondent, as contractor, has not executed the document. John Tattersall, an employee of the respondent, is alleged to have signed this document "for McNamara 27/5/74". There is no evidence before the Board that John Tattersall was in fact an agent for McNamara or for anyone else. The purchase order dated May 15, 1974, in no way establishes an intention to make anyone an employee of McNamara Corporation Limited, 271271 Ontario Limited, a joint venture.

28. The Board finds Kuld and Dacunha were employees of the respondent on the project at 100 Carlton Street in Toronto.

29. While the principal business of the respondent may not be in the construction industry, the Board finds that with respect to the facts contained in this decision the respondent has entered the construction industry. The fact that an employer does not anticipate it will regularly carry on a business in the construction industry in the future or even carry on one more operation in the construction industry, is no reason not to hold that such employer is carrying on a business in the construction industry. Reference is made to the Kapuskasing Board of Education case, 72 CLLC ¶16,057; Tops Marina Motor Hotel case, 64 CLLC ¶16,004, OLRB Monthly Report, January 1964, p. 583, to the Canada Niagara Falls

Limited case, OLRB Monthly Report, April 1966, p. 44, and to the Mattagami Lake Mines Limited (No Personal Liability) case, OLRB Monthly Report, February 1970, p. 1356.

30. Having regard to the foregoing, the Board finds that this is an applicant for certification within the meaning of section 108 of The Labour Relations Act.

31. The Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent within Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

33. A certificate will issue to the applicant.

6857-74-R: Service Employees Union Local 268 (Applicant) v. MANITOUWADGE GENERAL HOSPITAL (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: B. Dubniak for the applicant; E.T. Mustard and W. Harrison for the respondent.

DECISION OF THE BOARD: December 18, 1974.

1. This is an application for certification.

. . .

3. Having regard to the agreement of the parties the Board further finds that all employees of the respondent at Manitouwadge, Ontario, regularly employed for not more than 24 hours per week, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office and clerical staff, and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. At the hearing the Board announced that the employer had submitted

the names of ten persons employed in the bargaining unit at the date of the application and further announced that the trade union had submitted eight membership documents of which five corresponded with the names submitted by the employer. However, a further check of the membership evidence causes the Board to revise its findings in both this application dealing with the part-time employees and in File No. 6858-74-R which was processed by the Board at the same time and involving the same parties but dealing with the full-time employees.

5. The full-time bargaining unit consists of all employees of the respondent at Manitouwadge, Ontario save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.

6. And with reference to this full-time bargaining unit the Board announced that the employer had submitted the names of seven persons so employed on the date of application and further announced that the trade union had submitted six membership documents of which three corresponded with the names submitted by the employer.

7. On rechecking the membership evidence submitted by the applicant with reference to the full-time unit the Board found that the three "lost cards" bore the names and were executed by employees whose names appeared on the list of part-time employees submitted by the respondent.

8. Similarly on rechecking the membership evidence submitted by the applicant with reference to the part-time unit the Board found that these three "lost cards" bore the names and were executed by employees whose names appeared on the list of full-time employees submitted by the respondent.

9. Accordingly, in these most unique circumstances, and as a matter of exercising its wide discretion under Rule 56 of the Rules of Procedure R.S.O. 1970, the Board consolidates these two applications. Consolidation is appropriate only because the two applications possess common application dates, common terminal dates and common hearing dates. Moreover, the Form 8 declarations supporting each application were both executed on November 22, 1974 and received by the Board on November 25, 1974. Thus it is clearly apparent that the person in charge of sending the evidence to the Board inadvertently mixed up the membership evidence for the two applications. And it is this uniqueness that distinguishes these circumstances from those found in cases like E. and M. Lathing [1965] OLRB Rep. 209; Falconbridge Nickel Mines Ltd. [1966] OLRB Rep. 209 and Precision Automotive Co. Ltd. [1967] OLRB Rep. 740.

10. Therefore in amending the membership count for the part-time bargaining unit the Board finds that ten employees were in the bargaining unit at the time the application was made and that eight of these employees were members of the applicant on November 27, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

11. A certificate will issue to the applicant for the part-time bargaining unit.

11369-56: Retail Clerks International Association Local No. 409 AFL - CIO - CLC (Applicant) v. CHAPPLES LIMITED (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

DECISION OF THE BOARD: December 20, 1974.

1. This is an application by the Retail Clerks International Association Local No. 409 made pursuant to section 95(1) of the Labour Relations Act to amend a certificate granted to it on July 24, 1957 for a bargaining unit of "all employees of Chapples Limited at Fort William..." with certain exceptions, none of which are relevant to the instant application. The applicant asks the Board to amend the certificate by substituting for "Fort William" the phrase "the City of Thunder Bay".

2. The application was initiated by letter dated October 23, 1974 from the solicitors for the applicant. That letter reads in part as follows:

"The problem we are seeking to correct is that the Town of Fort William has ceased to exist. Rather, as of January 1st, 1970, the City of Thunder Bay was created as a municipal entity by the Province of Ontario. Hence, the nature of the amendment sought is that 'Fort William' be struck out and be replaced by 'the City of Thunder Bay'."

3. In correspondence with the Board the respondent opposes the applicant's request for amendment. In a letter dated November 25, 1974 counsel for the respondent states that the 1957 certificate sought to be amended has been followed by a series of collective agreements and that the recognition clause in the current collective agreement reads in part as follows:

"The Company recognizes the union as the exclusive bargaining agent of all employees at Chapples Stores Limited, Postal Station 'F', Thunder Bay..."

In the same letter counsel contends that since "the terms of the certificate have long since been superseded...[the] amendment at this time would be entirely inappropriate. It would also appear to be contrary to the Board's established policy".

4. By letter dated December 6, 1974 the solicitors for the applicant responded as follows:

"We do not feel that the response of Chapples Limited dated November 25th, 1974 really affects our original position. The current recognition clause in the collective agreement to which the representative for Chapples Limited refers, refers to 'Postal Station "F", Thunder Bay'. 'Postal Station "F"' is, in effect, the old Fort William, a geographic or municipal entity which no longer exists."

In the same letter the applicant refers to certain decisions which in its view indicate a Board policy of certifying the smallest municipal unit:

Butcher Boy Economy Markets, 1973 OLRB Rep. 262;
Lloydaire (1969) Limited, 1972 OLRB Rep. 361;
Tele-Direct Ltd., 1971 OLRB Rep. 490.

Finally, by letter dated December 11, 1974, the respondent contended that the cases cited by the applicant all dealt with the Board's policy in applications for certification and were therefore not in point. In addition to the Gilbarco case, OLRB Monthly Report, March 1971, p. 155, counsel for the respondent, in support of his position, referred to Aro Equipment of Canada Limited, 57 CLLC ¶18,096 and Falconbridge Nickel Mines Limited, O.L.R.B. M.R. Dec. 1964, p. 440.

5. In the Gilbarco case, supra, the Board stated its views as to the effect of the negotiation of a "scope clause" in a collective agreement upon certificates issued by the Board:

"...The parties are free to amend, alter, extend or abridge the bargaining rights contained in the certificate. Where bargaining rights in a collective agreement are not as extensive as those contained in a certificate, then that is prima facie evidence of the abandonment of that

portion of the bargaining rights contained in the certificate but not contained in the collective agreement. In effect, the collective agreement supplants the rights given by the Board's certificate and the Board's certificate is spent once the collective agreement is signed. Or to put it another way, the best evidence of the bargaining rights extant are those contained in the collective agreement. In the same way as bargaining rights in a collective agreement supplant rights contained in a certificate, so too bargaining rights in subsequent collective agreements may supplant bargaining rights contained in prior collective agreements."

6. The Board is of the view that the applicant's request is without merit. This is not a case where the respondent has refused to recognize the existence of the newly incorporated City of Thunder Bay, nor can it be contended that the bargaining rights of the applicant have been nullified or even reduced as a result of the incorporation of the new amalgamated municipality. In fact, it is apparent from the current collective agreement that the parties have directed their minds specifically to the problem and have negotiated a scope clause which in effect preserves the geographic ambit of the applicant's pre-existing bargaining rights. In the light of the current collective agreement, it would be entirely without precedent for the Board, on an application to amend a certificate granted approximately seventeen years ago, to substitute its views for those of the contracting parties as to the appropriate geographic limits of the bargaining unit. If the respondent has other employees within Thunder Bay, there is nothing to prevent the applicant from seeking to organize them in the usual way.

7. Although we are not required to express any final view on the matter in this application, it might be that if an application for the employees of a retail food chain in Thunder Bay were now to be made, the Board would recognize the amalgamated municipality as the appropriate geographic designation in the bargaining unit description. Here, however, bargaining rights confined to the former City of Fort William have existed for seventeen years and, most significantly, have been confirmed in negotiations since amalgamation.

8. Accordingly, the Board, having considered the representations of the parties and in the exercise of its discretion, denies the applicant's request for amendment.

6741-74-U: DOMTAR PACKAGING LIMITED (Applicant) v. Canadian Paperworkers Union, and its Local 528, Red Rock, Ontario (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER F. W. MURRAY:
December 27, 1974.

1. The Board notes the agreement of the parties substituting F. W. Murray for H.J.F. Ade as the employer representative on the Board.
2. This is an application under section 82 of the Act where it is alleged that the respondent trade union called or authorized an unlawful strike.
3. The Board notes counsel's letter dated November 27, 1974, requesting written reasons for the Board's decision given orally declaring the respondent indeed called or authorized a strike contrary to the provisions of the Act.
4. At the outset of the hearing dated November 8, 1974 counsel agreed that the parties herein were bound by a collective agreement, as amended, dated December 19, 1973 and whose term of operation covers the period between May 1, 1973 and April 30, 1975.
5. In August, 1974, the applicant employer proposed to several representatives of the trade unions holding collective bargaining rights for its employees "an across the Board" cost of living increase of 25¢ per hour. On September 12, 1974, a meeting was held amongst representatives of these unions and representatives of the applicant to discuss the proposal. The trade unions concerned appear to have formed a loose association known as "The Mill Council" wherein matters of common concern would be discussed with the applicant employer en bloc. The constituent members include The International Brotherhood of Electrical Workers, Local 2041, The International Union of Operating Engineers, Local 865, the respondent's sister Local 255 and the respondent Local 528. The Chairman of "The Mill Council" is Mr. E. Asselin, President of I.B.E.W., Local 2041.
6. At the meeting of September 12, 1974, Mr. Asselin on behalf of the council rejected the applicant's proposal and suggested that the terms of the subsisting collective agreements be renegotiated on the basis of the recent industry-wide wage settlements negotiated in the Province of British Columbia. Furthermore, it was indicated that the constituent trade unions comprising the "Mill Council" were to instruct their members to withhold overtime work until "the cost of living matter was resolved." Mr. Gauley, President of the respondent trade union, participated in this meeting whereat the proposal was rejected.
7. A second meeting was called on September 25, 1974, at the applicant's request. Representatives of "The Mill Council" attended

along with several officers of the respondent trade union including, Mr. Gauley, Mr. Laverdure, First Vice-President, and Mr. Kroker, corresponding secretary. At that meeting Mr. Hessian, the applicant's resident manager, indicated that the applicant intended to implement the proposed cost of living increase on September 27 provided no objection was received in writing from the representative bargaining agents. The trade union representatives at that time merely requested that the applicant defer implementation to a later date pending further consideration of the matter. By October 8, 1974, all the unions save the respondent acceded to the applicant's proposal thereby removing the ban on overtime as it applied to employees represented by them. On October 3, 1974, the applicant was advised that the respondent would agree to the implementation of the increase but without prejudice to the continuation of the overtime ban. The respondent's position was repeated at a meeting held on October 8, 1974 and attended by Messrs. Laverdure and Kroker on behalf of the respondent and Messrs. Hessian and Foulds (plant superintendent) on behalf of the applicant. The respondent indicated that employees would continue to refuse to work overtime until instructions to the contrary were received from the respondent's International representative (Mr. Wirtz), and a membership meeting ratified the applicant's proposal. This position was repeated once again at a meeting with Mr. Hessian in the presence of the respondent's executive officers on October 10, 1974.

8. The respondent trade union holds representative rights for 125 maintenance workers and 225 production shift workers. The difficulties encountered by the applicant as a result of the refusal by employees to work overtime related particularly to the maintenance workers. The maintenance department comprised both mechanical maintenance and instrument maintenance employees. The "prime function" of these employees was to keep existing plant machinery in good working order, to install new equipment and to make major modifications to existing machinery when required. Maintenance employees normally are required to work overtime in two particular instances. They may be required to work beyond their normal shift to complete work heretofore started and/or until relief help arrives and when "called in" in an emergency by a member of the applicant's supervisory staff to repair machinery that had broken down. The effect of employees' refusal to work overtime would inevitably delay and affect the applicant's productive capacity occasioned by the time lost in repairing a particular piece of machinery. In this regard, the Board heard uncontradicted evidence of instances where employees were called in to work overtime but refused to do so in accordance with the respondent's directive not to comply with such requests. Furthermore, notwithstanding other production and personnel problems facing the employer at that time, the Board is satisfied that failure by employees to accede to overtime requests adversely affected the employer's productive capacity in the period under review. That is to say, from September 12, 1974 until October 19, 1974, the evidence indicates that employees by refusing to work overtime engaged in a work stoppage within the meaning of section

1(1)(m) of the Act (see; Hydro Electric Power Commission of Ontario Case OLRB M.R. May 1969 249 upheld on review 70 CLLC ¶14,031 (CA)) and such activity was unlawful and is contrary to Section 63(1) of the Act. (Harding Carpets Limited Case 56 CLLC para. 18,031 at p. 1566).

9. On October 11, 1974, Mr. Hessian met with Mr. Wirtz the respondent's International Representative, Mr. Gauley, Mr. Czigli, the respondent's financial secretary and Mr. Todd, the respondent's treasurer. Mr. Wirtz asked whether the company's position on the cost of living matter had altered in the sense that the collective agreement would be reopened on the basis of the British Columbia settlements. Mr. Hessian indicated that he had no authority to discuss such matters but expected the respondent to adhere to the terms of the subsisting collective agreement. In other words, the company's position had not changed and the applicant's expectation was that the respondent would lift its directive with respect to the overtime ban. Mr. Hessian also informed the respondent's representatives that the applicant was considering "recourse" to the services of the Ontario Labour Relations Board if the overtime ban continued.

10. On October 15, 1974, the applicant employer attempted to make adjustments to the scheduling of regular shift work to mitigate the impact of the slow downs in production attributable to delays in repairing machinery. In this manner it was anticipated that emergency break downs of machinery could be serviced by employees on a regular basis thereby overcoming the ban on overtime work. This strategy however appears to have been frustrated by employees' refusal to comply with any alteration in their normal shift. At a meeting held on October 22, 1974, Mr. Gauley reiterated the respondent's position that the overtime ban was still on and accession to the changes in employee shift work "would be cutting their noses off to spite their face". At this same meeting Mr. Gauley asked why the applicant refused to discuss the cost of living issue in a like manner as other mill operations had agreed. In any event, the message was brought home to the applicant that the overtime ban was to continue until the dispute was resolved. In other words the means employed by the applicant to circumvent the problem was not to succeed.

11. During this period the Board entertained evidence of several of the members of the applicant's supervisory staff with respect to unanswered call-ins for overtime precipitated by the break down of machinery. In such instances, repairs to machinery awaited the regular day shift when the maintenance staff arrived at work. Upon calls being made employees usually refused because of the respondent's directive or sought assurances that compensation would be forthcoming in the event a penalty was meted out for violating the directive. In light of the foregoing the Board is satisfied that the refusal by employees to work overtime was a direct consequence of the respondent trade union's attempts to exact from the employer a commitment to reopen the existing agreement on the terms put forth by the union executive at the several meetings held with rep-

representatives of the employer commencing on September 12, 1974. During this period we are further satisfied the respondent through its officers called and authorized its members "to work to rule" until the objective of employer capitulation was achieved. Furthermore we find that such activity constituted the calling and authorization of unlawful strike contrary to section 65 of the Labour Relations Act. (see: Beaver Shirt and Sportswear Limited et al Case OLRB M. R. July 1964 187 at p. 190.

12. In this regard, we find that the evidence adduced through Mr. Wirtz does not answer the case made out by the applicant. Mr. Wirtz indicated that on October 11, 1974, he urged the employees affected at a duly called membership meeting to return to work. Later that day, Mr. Gauley appears to have informed Mr. Hessian of the membership's position rejecting the recommendation to return to work. In order for the Board to accept as credible the testimony of Mr. Wirtz in this regard the Board would thereby be rendering suspect the testimony of Messrs. Morrissey the applicant's mechanical foreman, Mr. K. Farrell, the applicant's mechanical superintendent and Mr. Hessian all of whom indicated that employees refused to respond to call-ins for overtime between September 12 and October 19, 1974, because the union would not permit them or because to do so would expose them to a fine. Indeed in one instance an employee as a condition to answering a call-in requested the company reimburse him for an anticipated fine. The Board is satisfied that the evidence indicates a pattern of conduct on behalf of officers of the respondent trade union before and after October 11, 1974, authorizing a continuation of a ban on overtime throughout the period under review. And it further appears from the evidence that save for a conditional agreement that employees would work shift work on December 4, 1974, for a specified purpose, the overtime ban was not to be discontinued as of the date of the second hearing of this matter on November 26, 1974. We therefore are not disposed to exercise our discretion in favour of withholding a declaration of unlawful strike activity (see: The Norfolk General Hospital Case OLRB M.R. September 1974 581).

13. In any event the Board is not of the opinion that the union officers named herein exhibited the necessary influence on the respondents members to persuade them to desist from their unlawful activity. On the contrary, the evidence indicates that at the meeting of October 22, 1974, Mr. Gauley President of the respondent local told Mr. Hessian that employees would not report to work in accordance with the altered shift schedules. To do so, it was explained, would be self defeating in light of the continued policy of the respondent advising refusal upon request to work overtime. In these circumstances in order for a trade union to avoid responsibility for the wrongdoings of rank and file members we are of the view that union officers must show official disapproval by dissociating themselves from the unlawful strike activity. (see: The Toronto Western Hospital Case OLRB M.R. December 1972 1018 at p. 1024). In other words, once a case has been out that employees have engaged in an unlawful work stoppage, the onus thereupon shifts to the respondent

trade union to establish that "an honest and sincere effort was made to cause the employees to return to their work" (see; Overland Express Case OLRB M.R. February 1962 408 at p. 409). We are satisfied that the evidence falls far short of establishing that the efforts of the respondent's officers were applied with a view to persuading the employees affected to discontinue their "work stoppage". (see; for example The Western Freight Lines Limited Case OLRB M.R. December 1965 648). Rather, the evidence indicates a pattern of conduct by these officers designed to exact concessions from the applicant through means prohibited by The Labour Relations Act. (see; The Wood-Mosaic Ltd. Case 56 CLLC ¶18,044; The Toronto Western Hospital Case OLRB M.R. July 1972 731; Westeel-Rosco Ltd. Case OLRB M.R. July 1967 365).

14. Accordingly, the Board declares that the respondent through the activities of its officers [S88(2)] called and authorized a strike, contrary to the provisions of Section 65 of the Act.

DECISION OF BOARD MEMBER O. HODGES: December 27, 1974.

1. Assuming, but without deciding that a refusal by the respondent employees to work overtime in excess of their regularly scheduled 40 hour work week constitutes an unlawful strike, the question arises as to whether, in the circumstances in this case, the Board should exercise its discretion and issue such a declaration.

The circumstances in which a declaration should issue under Section 63 of The Labour Relations Act have been considered in a number of past decisions of the Board. In the Ball Brothers Case, (1957) CCH Canadian Labour Law Reporter, Transfer Binder, 1955-59, ¶16,091, it was said that:

"The Board has generally held a declaration should not be issued in cases in which the strike has been settled before the application came on for hearing".

2. Considering the jurisprudence of the Board with respect to the meaning of section 1(1)(m) of the Act, it appears that on the facts of the instant case a "strike" occurred. However, I am satisfied that the applicant was and is able to cope with any future refusal to work overtime, within the framework of the existing collective agreement and the collective bargaining relationship. I note in particular Article 30(b) of the collective agreement under the heading "General Provisions", which states:

"Salaried supervisors and salaried foremen shall not perform work which belongs to the bargaining

unit, except in emergencies and for the purpose of instructing new employees. The Company is in agreement with the Unions that the operator should be kept informed as to what and why the supervisor is helping out when there are problems with equipment or process." Emphasis added.

No evidence was adduced by the applicant going to the question of inability of salaried supervisors or salaried foremen to effect the emergency repairs claimed by the applicant to have required overtime by bargaining unit employees affected by this application, or whether supervisors attempted to perform such repairs. In these circumstances, I have some difficulty in understanding the majority of this panel of the Board, as stated in Paragraph 8 of their decision, "is satisfied that failure by employees to accede to overtime requests adversely affected the employer's productive capacity in the period under review". The collective agreement makes provision for supervisors and foremen to work in emergencies and the applicant in my view could have utilized those resources in these circumstances. The citation by the majority of the Hydro Electric Power Commission of Ontario case OLRB Monthly Report May 1969 at page 249 is helpful in this context, although in that case the refusal of overtime occurred at a time permitted by the Act, and the issue of the refusal of emergency overtime there was found to be lawful, although employees were working regular hours when overtime was ordered. No collective agreement was in effect at the relevant times in that case. The emergency work for which overtime was required in the Hydro case was performed by supervisory employees. The collective agreement in the instant case appears to have contemplated circumstances which would require supervisors and foremen to perform bargaining unit work, but as previously stated, there is no evidence to indicate the applicant took that recourse.

3. The applicant has sought to enforce overtime provisions of the collective agreement by way of a declaration that refusal of overtime is an unlawful strike. However, the employees continue to perform their duties within their regular hours of work. The evidence is that the competitors of the company dealing with the same trade union were amenable to bargaining on the economic problem which beset the employees of the entire industry alike. In all of these circumstances and in view of the remedy available to the applicant within the terms of the collective agreement, I cannot find with my colleagues and I would therefore dismiss the application.

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APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING NOVEMBER

6542-74-R: The Toronto Motion Picture Projectionists Union Local #173 International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada (Applicant) v. T W C Television Limited (Respondent) v. Gunnar Domander (Employee). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 816.

6756-74-R: International Ladies' Garment Workers' Union (Applicant) v. Pert Knitting Ltd. (Respondent). (GRANTED).

JURISDICTIONAL DISPUTES

2370-72-JD: Labourers' International Union of North America Local 837 (Complainant) v. United Brotherhood of Carpenters and Joiners of America, Local Union 38 and C. A. Pitts Engineering Construction Limited (Respondents). (WITHDRAWN).

3902-73-JD: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Complainant) v. Ilena Construction Company Limited; Labourer's International Union of North America, Local 183; General Contractors Section of the Toronto Construction Association and The Toronto Form Work Association (Respondents). (DIRECTION).

(1974) 2 OLRB M.R. - PAGE 775.

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

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6601-74-M: The Canadian Union of Public Employees and its Local Number 1189 (Applicant) v. The Corporation of the City of Owen Sound (Respondent). (TERMINATED).

REFERENCE TO BOARD PURSUANT TO SECTION 96

6395-74-M: Winco Steak N' Burger Restaurants Limited (Employer) v. The Hotels, Clubs, Restaurants, Taverns Employees' Union, Local 261, Ottawa, Ontario, Chartered by the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O. (Trade Union). (AFFIRMATIVE).

(1974) 2 OLRB M.R. - PAGE 788.

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

5714-74-R: Labourer's International Union of North America Local Union 493 (Applicant) v. Ken Bunyak's Bus Lines (Respondent). (REQUEST DENIED).

(1974) 2 OLRB M.R. - PAGE 794.

6566-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Raylena Construction Co. Ltd. (Respondent). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER 1974

BARGAINING AGENTS CERTIFIED DURING DECEMBER

No Vote Conducted

4354-73-R: International Association of Machinists and Aerospace Workers (Applicant) v. Fleetwood Corporation (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (9 employees in the unit).

5593-74-R: Local Union 800 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Yellow Jacket Welding Company Limited (Respondent).

Unit: "all plumbers, plumbers' apprentices, steamfitters, steamfitters' apprentices, pipefitters, pipefitters' apprentices, gasfitters and gasfitters' apprentices in the employ of the respondent in the District of Manitoulin excepting therefrom those portions of the District of Manitoulin which are included in the area encompassed by a thirty-five mile radius from the Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT WELDERS WHO ARE WORKING IN CONJUNCTION WITH THE TRADES REFERRED TO IN THE BARGAINING UNIT ARE INCLUDED IN THE BARGAINING UNIT.).

5663-74-R: Ontario Nurses' Association (Applicant) v. South Huron Hospital Association (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent in Exeter, engaged in a nursing capacity, save and except supervisors, persons above the rank of supervisor, and persons regularly employed for not more than 24 hours per week." (17 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE.).

5889-74-R: Carpenters' District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Group Thirty Three Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

(1974) 2 OLRB M.R. - PAGE 888.

6316-74-R: Ontario Nurses' Association (Applicant) v. Sudbury Memorial Hospital (Respondent).

Unit #1: "all Registered and Graduate Nurses in the employ of the respondent save and except Head Nurses, persons above the rank of Head Nurse, Discharge Planning Officer, Health Nurses, the Director of Volunteers and persons employed for not more than 24 hours per week." (66 employees in the unit).

Unit #2: "all Registered and Graduate Nurses in the employ of the respondent regularly employed for not more than 24 hours per week, save and except Head Nurses, persons above the rank of Head Nurse, Discharge Planning Officer, Health Nurses, the Director of Volunteers and persons above those ranks." (67 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 871.

6590-74-R: Canadian Union of Public Employees (Applicant) v. Frontenac Lennox and Addington County Roman Catholic Separate School Board (Respondent) v. Employee (Objector).

Unit #1: "all employees of the respondent in the County of Frontenac and the County of Lennox and Addington engaged in Maintenance, Services and Plant Operations, save and except foremen, persons above the rank of foreman, office and clerical staff, teachers aides and teachers, persons regularly

employed for not more than twenty-four hours per week, students employed during the school vacation period and persons covered by the collective agreement between the respondent and Canadian Union of Public Employees and its Local 1479." (19 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

6602-74-R: Office and Professional Employees International Union (Applicant) v. Sydenham District Hospital (Respondent) v. Ontario Nurses' Association (Intervener).

Unit #1: "all office and clerical employees employed by the Hospital at Wallaceburg, save and except department heads and supervisors, persons above the rank of department head and supervisor, the secretary to the Administrator, the secretary to the Director of Nursing, Purchasing Assistant, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and employees for whom bargaining rights are held by the Ontario Nurses' Association and the Service Employees International Union, Local 210." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

6612-74-R: Retail Clerks International Association (Applicant) v. Shop-Easy Stores (Respondent).

Unit: "all employees of the respondent at its Shop Easy store in Fort Frances, Ontario, save and except the store manager, persons above the rank of store manager and persons covered by an existing collective agreement." (2 employees in the unit).

6673-74-R: United Steelworkers of America (Applicant) v. Canada Carbon and Ribbon Company Limited (Respondent).

Unit #1: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period, and persons regularly employed for not more than 24 hours per week." (77 employees in the unit).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

6695-74-R: Retail Clerks International Association (Applicant) v. Loblaw's - Division of Westfair Foods Ltd. (Respondent).

Unit: "all employees of the respondent save and except the manager, persons above the rank of manager, and those employees of the respondent presently covered by the subsisting collective agreement between the applicant and the respondent." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES TO THE EFFECT THAT THE SAID BARGAINING UNIT INCLUDES THE ASSISTANT MANAGER, BAKERY MANAGER AND MEAT MANAGER.).

6703-74-R: Ontario Nurses' Association (Applicant) v. Cobourg District General Hospital Association (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing capacity by the respondent at Cobourg, save and except Head nurses and those above the rank of Head Nurse, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (63 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity by the respondent at Cobourg who are regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except Head Nurses, and those above the rank of Head Nurse." (32 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6710-74-R: Wood, Wire and Metal Lathers International Union Local 562 (Applicant) v. Actpar Limited (Respondent) v. United Brotherhood of Carpenters & Joiners of America, LU 1316 (Intervener).

Unit: "all lathers and lathers' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (27 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6761-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Scarborough Centenary Hospital Association (Respondent).

Unit: "all radiology technologists/technicians employed by the respondent at its Radiology Department in Metropolitan Toronto, save and except chief technologist, assistant chief technologist, persons above the rank of chief technologist and assistant chief technologist, students in training, students employed during the school vacation period, office and clerical employees and all employees covered by subsisting collective agreements." (17 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6771-74-R: National Association of Broadcast Employees and Technicians - CLC (Applicant) v. The Board of Education for the City of London (Respondent) v. Canadian Union of Public Employees, Local 982 (Intervener #1) v. Canadian

Union of Public Employees, Local 190 (Intervener #2) v. Canadian Union of Public Employees, Local 1150 (Intervener #3).

Unit: "all ETV Technicians employed by the Respondent at London, Ontario, save and except Co-ordinator, Programming Supervisor, Production Supervisor, Instructional Supervisor, Teachers under the Teaching Profession Act, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, casual or temporary employees and persons covered by subsisting Collective Agreements between the Respondent and the Canadian Union of Public Employees." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6776-74-R: Christian Labour Association of Canada (Applicant) v. Lakeview Sheet Metals (Orillia) Limited (Respondent).

Unit: "all sheet metal workers, sheet metal apprentices and construction labourers in the employ of the respondent in the Township of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6782-74-R: Ontario Nurses' Association (Applicant) v. Ross Memorial Hospital (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in Lindsay, Ontario, engaged in a nursing capacity, save and except head nurses and persons above the rank of head nurses." (165 employees in the unit).

6784-74-R: Ontario Nurses' Association (Applicant) v. The St. Thomas-Elgin General Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed by the St. Thomas Elgin General Hospital, St. Thomas, in a nursing capacity, save and except Head Nurses, those persons above the rank of Head Nurse, persons regularly employed for not more than 24 hours per week, and persons covered by any subsisting collective agreement." (119 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO EXCLUDE THE FOLLOWING PERSONS; 1. PERSONS CLASSIFIED AS "IN SERVICE NURSES" IN THAT THEY ARE EMPLOYED IN A CONFIDENTIAL CAPACITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT; 2. PERSONS CLASSIFIED AS "HEALTH NURSES" IN THAT THEY ARE EMPLOYED IN A CONFIDENTIAL CAPACITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT; 3. PERSONS CLASSIFIED AS "INFECTION CONTROL OFFICER" IN THAT THEY DO NOT SHARE A COMMUNITY OF INTEREST WITH THE MEMBERS OF THE BARGAINING UNIT.).

Unit #2: "all registered and graduate nurses employed in a nursing capacity by the St. Thomas Elgin General Hospital, St. Thomas, regularly employed

for not more than twenty-four hours per week, save and except Head Nurses, persons above the rank of Head Nurses and persons covered by any subsisting collective agreement." (21 employees in the unit).

6785-74-R: Ontario Nurses' Association (Applicant) v. Royal Victoria Hospital of Barrie, Inc. (Respondent) v. Group of Employees (Objectors).

Unit: "all registered and graduate nurses employed by the respondent at Barrie, engaged in a nursing capacity save and except head nurses, persons above the rank of head nurse, staff health nurse, the discharge referral officer and the head of the central supply department." (234 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6786-74-R: Ontario Nurses' Association (Applicant) v. The Regional Municipality of Waterloo (Respondent).

Unit: "all registered and graduate nurses employed by the Regional Municipality of Waterloo at the Sunnyside Home, Kitchener, in a nursing capacity save and except Director of Nurses, and persons above the rank of Director of Nurses." (12 employees in the unit).

6802-74-R: Ontario Nurses' Association (Applicant) v. Bestview Holdings Limited (Respondent).

Unit: "all registered and graduate nurses employed by Bestview Holdings Limited at Bestview Nursing Home in the City of St. Catharines, Ontario in a nursing capacity save and except Director of Nurses and persons above the rank of Director of Nurses." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6813-74-R: United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. Mr. Seamless Eavestroughing Thunder Bay Limited (Respondent) v. Employees (Objectors).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 875.

6833-74-R: The International Ladies Garment Workers' Union (Applicant) v. Blouse & Slax Contractors (Respondent).

Unit: "all employees of the respondent at Alexandria, save and except foreladies, persons above the rank of forelady, and office staff." (22 employees in the unit).

6839-74-R: United Association, Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787 (Applicant) v. Comstock International Ltd. (Respondent).

Unit: "all journeymen and apprentices in the employ of the respondent engaged in the refrigeration and air conditioning trade working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit). (HAVING REGARD TO THE FOREGOING AND TO THE REPRESENTATIONS OF THE PARTIES).

6850-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Paul Carruthers Construction Limited (Respondent).

Unit: "all employees of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6857-74-R: Service Employees Union Local 268 (Applicant) v. Manitouwadge General Hospital (Respondent).

Unit: "all employees of the respondent at Manitouwadge, Ontario, regularly employed for not more than 24 hours per week, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office and clerical staff, and students employed during the school vacation period." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(1974) 2 OLRB M.R. - PAGE 895.

6858-74-R: Service Employees Union Local 268 (Applicant) v. Manitouwadge General Hospital (Respondent).

Unit: "all employees of the respondent at Manitouwadge, Ontario, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6859-74-R: Graphic Arts International Union Local 224 (Applicant) v. Beauregard Press Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Ottawa, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and students employed pursuant to a co-operative training programme." (22 employees in the unit).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6865-74-R: United Rubber, Cork, Linoleum and Plastic Workers of America AFL-CIO-CLC (Applicant) v. Parnell Foods (Hamilton) Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Waterloo, save and except supervisors, office and outside commercial sales staff, persons regularly employed for not more than 20 hours per week and students employed during the school vacation period." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6866-74-R: Labourers International Union of North America Local 493 (Applicant) v. Adam Clark Company Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent within the Townships of Yates, Law, Askin, Torrington, Olive, Milne, McCallum, Sisk, and Kenny, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6867-74-R: Labourers International Union of North America Local 837 (Applicant) v. Warren Bitulithic Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

6870-74-R: International Association of Machinists and Aerospace Workers (Applicant) v. White Trucks Canadian Parts Warehouse, A Division of White Motor Corporation of Canada Limited (Respondent).

Unit: "all office and clerical employees of the respondent at its Canadian Parts Warehouse in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and persons bound by a subsisting collective agreement." (8 employees in the unit).

6871-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Wallaceburg (Respondent).

Unit: "all employees of the respondent at Wallaceburg employed in its office, clerical and technical operation, save and except town manager, town clerk, town treasurer, town engineer, deputy town clerk, assistant town engineer, secretary to the town manager, assistant accountant, supervisor day nursery, works administrator, works superintendent, resident

engineer, persons employed by the Police Commission, students employed during school vacation periods, persons regularly employed for not more than 24 hours per week and persons covered by subsisting collective agreements." (38 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6878-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Cornwall Gravel Co. Ltd. (Respondent).

Unit: "all employees of the respondent working at and out of Cornwall, Ontario, save and except foremen, dispatchers, those above the rank of foreman, dispatcher, office and sales staff, those employees covered by an agreement with Local 793 of the International Union of Operating Engineers and those employees covered by an agreement with Labourers' International Union of North America, Local 527." (10 employees in the unit). (THE BOARD NOTED THAT LOCAL 527'S AGREEMENT IS REFERABLE TO ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, AND UNDERSTANDS THAT LOCAL 793'S AGREEMENT IS REFERABLE TO ALL EMPLOYEES OF THE EMPLOYER ENGAGED IN THE OPERATING, REPAIRING, MAINTAINING, OILING OR GREASING OF POWER DRIVEN OR POWER GENERATING CONSTRUCTION EQUIPMENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY.).

6880-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. West Front Construction Limited (Respondent).

Unit: "all employees of the respondent at and out of Cornwall, Ontario, save and except foremen, persons above the rank of foreman, office staff and those covered by subsisting collective agreements with Local 193 of the Operating Engineers International Union and Local 527 of the Labourers' International Union." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6894-74-R: Labourers International Union of North America Local 837 (Applicant) v. City Paving Co. Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6896-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cornwall Gravel Co. Ltd. (Respondent).

Unit: "all employees of the respondent at its quarry and its asphalt plant on the north side of Southbranch Road, in the Township of Cornwall, in the County of Stormont, save and except foremen, those above the rank of foreman, office and clerical staff." (7 employees in the unit).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6898-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bot Construction (Canada) Limited (Respondent).

Unit: "all employees of the respondent in the District of Thunder Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6903-74-R: Ontario Nurses' Association (Applicant) v. Extendicare Ltd. (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at St. Catharines engaged in a nursing capacity, save and except director of nursing and persons above the rank of director of nursing, and persons regularly employed for not more than 24 hours per week." (6 employees in the unit).

Unit #2: "all registered and graduate nurses employed by the respondent at St. Catharines engaged in a nursing capacity for not more than 24 hours per week, save and except director of nursing and persons above the rank of director of nursing." (4 employees in the unit).

6904-74-R: Ontario Nurses' Association (Applicant) v. Manitouwadge General Hospital (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in a nursing capacity at Manitouwadge, save and except head nurses, and persons above the rank of head nurse." (13 employees in the unit).

6905-74-R: Ontario Nurses' Association (Applicant) v. Milton District Hospital (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in a nursing capacity at Milton, save and except head nurses and persons above the rank of head nurse." (52 employees in the unit).

6907-74-R: Ontario Nurses' Association (Applicant) v. Welland County General Hospital (Respondent).

Unit: "all registered and graduate nurses employed by the respondent at Welland engaged in a nursing capacity who are regularly employed for not

more than 24 hours per week, save and except head nurses and persons above the rank of head nurse." (91 employees in the unit).

6922-74-R: Christian Labour Association of Canada (Applicant) v. Petersen Nursing Home Owned and Operated by Versa-Care Centres of Ontario Limited (Respondent).

Unit: "all employees of the respondent employed at the Petersen Nursing Home, 671-2nd Avenue East, Owen Sound, Ontario, save and except registered nurses, supervisors, persons above the rank of supervisor, office staff and persons regularly employed for not more than 24 hours per week." (33 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6926-74-R: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Carling O'Keefe Limited, Carling O'Keefe Transport Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees, nurses and nursing assistants employed by the respondent at its premises in Waterloo, Ontario, save and except salesmen, foremen, supervisors, office manager, sales administrator, secretary to the plant manager, secretary to the personnel supervisor, laboratory technicians, students employed during the school vacation period and employees covered by subsisting collective agreements." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6928-74-R: The Labourers International Union of North America, Local 607 (Applicant) v. Aalton Construction (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6934-74-R: Labourers International Union of North America, Local 493 (Applicant) v. Dineen Roads and Bridges Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Townships of Chamberlain, Marter, Bayly, Ewanturel, Ingram, Dack, Beauchamp, Armstrong, and Hilliard in the District of Timiskaming, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6937-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. M. Sullivan and Son Limited (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local #1988 (Intervener).

Unit: "all employees of the respondent in the County of Renfrew engaged in the operation of cranes, shovels, bulldozers and similar equipment, and

those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6938-74-R: Teamsters Local 879 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Armbrø Materials & Construction Ltd. (Respondent).

Unit: "all employees of the respondent engaged in the production and distribution of aggregate products in the Township of Saltfleet, save and except foremen and dispatchers, persons above the rank of foreman and dispatcher, office and sales staff, and persons covered by a subsisting collective agreement." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6940-74-R: Canadian Union of Public Employees (Applicant) v. Buffam Ambulance Service (Respondent).

Unit: "all employees of the respondent working out of Haileybury, save and except manager and persons above the rank of manager." (5 employees in the unit).

6941-74-R: Christian Labour Association of Canada (Applicant) v. Point Anne Quarry Company, a division of Standard Industries Limited (Respondent).

Unit: "all employees of the respondent at its quarry at Point Anne, Ontario, save and except foremen and persons above the rank of foreman, dispatchers, office and sales staff." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6942-74-R: Canadian Union of Public Employees (Applicant) v. The Peterborough Public Library Board (Respondent).

Unit: "all employees of the respondent at Peterborough, save and except chief librarian, persons above the rank of chief librarian, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (16 employees in the unit).

6943-74-R: Northern Electric London Professional Association (Applicant) v. Northern Electric Company Limited (Respondent) v. U.A.W. Local 1525 (Intervener).

Unit: "all professional engineers engaged in engineering work by the respondent at its manufacturing facilities in London, save and except Department Managers, persons above the rank of Department Manager and persons covered by a subsisting collective agreement between the respondent and the intervener." (34 employees in the unit). (HAVING CAREFULLY REVIEWED THE REPRESENTATIONS OF THE PARTIES).

6944-74-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Westcane Sugar Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all laboratory technicians employed by the respondent at its Oshawa, Ontario plant, save and except supervisors, persons above the rank of supervisor, chief analyst, chief chemist, sugar boilers, office staff, sales staff, persons covered by subsisting collective agreements, persons employed for not more than twenty-four hours per week and students employed during the school vacation period." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6945-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Moir Construction Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

6949-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Echod Holdings Inc., (Respondent).

Unit: "all construction labourers employed by the respondent on residential construction in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6952-74-R: Local Union 2028, International Brotherhood of Electrical Workers, AFL-CIO-CLC (Applicant) v. The Public Utilities Commission of the City of Oshawa (Respondent).

Unit: "all Office, Clerical and Technical employees of the respondent, save and except Supervisors, and those above the rank of Supervisor, Senior Programmer Analyst, Internal Control Officer, one confidential secretary to each of the following: The Transit Superintendent, the Secretary-Treasurer, the Assistant Manager and the General Manager, employees covered by subsisting collective agreement covering outside employees." (44 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS "ENGINEERING TECHNICIANS 'A'" ARE INCLUDED IN THE BARGAINING UNIT AND THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS "INTERNAL CONTROL OFFICER" AND "SENIOR PROGRAMMER ANALYST" SHOULD BE EXCLUDED FROM THE BARGAINING UNIT, BECAUSE THEY EXERCISE CONFIDENTIAL DUTIES WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.). (THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES TO THE

EFFECT THAT IF IN THE FUTURE THERE IS AN INCREASE IN STAFF IN THE ENGINEERING DEPARTMENT AND IT BECOMES NECESSARY TO HAVE MORE SUPERVISORY PERSONNEL, AND THE PARTIES CANNOT AGREE AMONGST THEMSELVES, THEN THE PARTIES AGREE TO APPROACH THE BOARD JOINTLY UNDER SECTION 95(2).).

6954-74-R: International Beverage Dispensers' and Bartenders' Union, Local 280 of The Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-C.I.O.-C.L.C. (Applicant) v. Brodan Hotel and Investment Limited (Respondent).

Unit: "all full time and part time tapmen, bartenders, beverage waiters, bar boys and improvers in the employ of the respondent at the Commerce Public House in Metropolitan Toronto, save and except manager and persons above the rank of manager." (10 employees in the unit).

6956-74-R: Labourers' International Union of North America, Local 1081 (Applicant) v. PLS Construction Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6967-74-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Ontario Metis and Non Status Indian Association (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6968-74-R: Christian Labour Association of Canada (Applicant) v. Brechin Crushed Stone Company, a division of Standard Industries Limited (Respondent).

Unit: "all employees of the respondent at its quarry at Brechin, Ontario, save and except foremen, persons above the rank of foreman, office staff, sales staff, dispatchers and highway truck drivers." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6971-74-R: Christian Labour Association of Canada (Applicant) v. Indian Bay Limited (Respondent).

Unit: "all electricians, electricians' apprentices, plumbers, plumbers' apprentices, sheet metal workers and sheet metal apprentices in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6972-74-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Dehey Development Incorporated (Respondent).

Unit: "all employees of the respondent in the Counties of Essex and Kent engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, construction labourers and truck drivers, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6975-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. S. McNally & Sons Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

6978-74-R: United Steelworkers of America (Applicant) v. Claude Beaumier Construction Limited (Respondent).

Unit: "all employees of the respondent company working in and out of Elliot Lake, save and except foremen, persons above the rank of foreman, office and sales staff." (24 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6981-74-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Western Metals Corporation Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

6988-74-R: Local Union 1802, International Brotherhood of Electrical Workers AFL - CIO - CLC (Applicant) v. The Hydro-Electric Commission of the City of Sarnia (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees save and except supervisors and those above this rank, one confidential secretary to the General Manager, Engineering Assistants and draftsmen, Salesmen, and employees covered by the subsisting outside collective agreement." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6989-74-R: Canadian Paperworkers Union (Applicant) v. General Paper Company Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (17 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6991-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Applicant) v. Moir Construction Company Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7001-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Kennedy Park Properties (Respondent).

Unit: "all construction labourers employed by the respondent on residential construction in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

7010-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dineen Roads & Bridges Limited (Respondent).

Unit: "all employees of the respondent in the Townships of Chamberlain, Marter, Bayly, Evanturel, Ingram, Dack, Beauchamp, Armstrong, and Hilliard in the District of Timiskaming, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

7012-74-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Jeffscott Mechanical Limited (Respondent) v. Sheet Metal Workers International Association, Local Union 537, Hamilton, Ontario (Intervener).

Unit: "all ironworkers in the employ of the respondent in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

7018-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. M.H.E. Contracting Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7022-74-R: The Civil Service Association of Ontario Inc. (Applicant) v. Ottawa General Hospital (Respondent).

Unit: "all lay technologists, technicians employed by the respondent in Ottawa in the departments of Respiratory Technology, Electromyography, Electroencephalography, Electrocardiography and Plumonary Function Laboratory, save and except technologists and those above such rank, and persons covered by subsisting collective agreements." (27 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7023-74-R: The Civil Service Association of Ontario Inc. (Applicant) v. Hallowell Ambulance Service (Respondent).

Unit: "all employees of the respondent employed as Ambulance Driver Attendants in the City of Toronto, save and except supervisors and persons above the rank of supervisor." (33 employees in the unit).

7032-74-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. N C R Canada Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its warehouse located at 1320 Blundell Road in Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (8 employees in the unit).

7043-74-R: Labourers International Union of North America, Local 607 (Applicant) v. Western Metals Corporation Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

5726-74-R: Union of Canadian Retail Employees (Applicant) v. Loblaw's Limited (Respondent).

Unit: "all office employees of the respondent in its Produce Buying, Warehouse and Garage Offices at Mississauga, Ontario, save and except Managers, persons above the rank of Manager, Assistant Managers, Supervisors, Fleet Co-ordinators and one Secretary to the Vice-President, Warehousemen and Transportation." (8 employees in the unit).

Number of names of persons on voters' list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	0	

6749-74-R: The Canadian Union of Public Employees (Applicant) v. The Hamilton Public Library (Respondent).

Unit: "all professional Librarians employed by the respondent at Hamilton, save and except Branch Heads and Department Heads, persons above the rank of Branch and Department Head, and persons regularly employed for not more than 21 hours per week and persons covered by subsisting collective agreement with the Canadian Union of Public Employees, Local 932." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		27
Number of persons who cast ballots	27	
Number of ballots marked in favour of applicant	26	
Number of ballots marked against applicant	1	

6760-74-R: Canadian Union of Operating Engineers (Applicant) v. Sunnybrook Hospital (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).

Unit: "all Stationary Engineers and persons primarily engaged as their helpers employed by the respondent in Metropolitan Toronto, save and except the assistant Chief Engineers and persons above that rank." (15 employees in the unit).

Number of names of persons on voters' list		15
Number of persons who cast ballots	14	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	6	

6790-74-R: International Woodworkers of America (Applicant) v. Northland Trailers (Soo) Ltd. (Respondent).

Unit: "all employees of Northland Trailers (Soo) Ltd., Sault Ste. Marie, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (22 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	22
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	8

6891-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. International Harvester Co. of Canada Ltd. Chatham Works (Respondent) v. Canadian Union of Operating Engineers Local 107 (Intervener).

Unit: "all Stationary Engineers and persons primarily engaged as their helpers in the Power House of the respondent, at Chatham, Ontario, save and except the Chief Engineer, persons above the rank of Chief Engineer, and persons covered by subsisting collective agreements between the respondent and The International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW), Local 35 and Local 127." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list	7
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervener	2

6918-74-R: Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees, Local 352, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Servico Limited (Respondent).

Unit: "all employees of the respondent at its Toronto Home Comfort Division in Metropolitan Toronto save and except foremen, dispatchers, those above the rank of foreman and dispatcher, office and sales staff." (30 employees in the unit).

Number of names of persons on voters' list	31
Number of persons who cast ballots	28
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	10

Applications Certified Subsequent to Post-Hearing Vote

6230-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Joseph Brant Memorial Hospital of the Burlington-Nelson Hospital (Respondent).

Unit: "all medical laboratory, radiology, nuclear medicine technologist, technicians and assistant employed by the respondent in Burlington, save and except assistant chief technologists and those above the rank of assistant chief technologist, students in training, students employed during the school vacation period, office and clerical employees, employees covered by subsisting labour agreements and persons regularly employed for not more than 24 hours per week." (58 employees in the unit). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT E.C.G. TECHNICIANS ARE INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on voters' list	38
Number of persons who cast ballots	32
Ballots segregated and not counted	2
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	3

6559-74-R: International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States & Canada Local #F73, Toronto, Ontario (Applicant) v. Warner Brothers Distributing (Canada) Limited (Respondent).

Unit: "all office and clerical employees of the respondent in Metropolitan Toronto, save and except the branch manager and persons above the rank of branch manager and students employed during the school vacation period." (24 employees in the unit).

Number of names of persons on voters' list	23
Number of persons who cast ballots	23
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	11

6590-74-R: Canadian Union of Public Employees (Applicant) v. Frontenac Lennox and Addington County Roman Catholic Separate School Board (Respondent) v. Employee (Objector).

Unit #2: "all persons regularly employed by the respondent in the County of Frontenac and the County of Lennox and Addington for not more than twenty-four hours per week and students employed during the school vacation period save and except persons covered by the collective agreement between the respondent and Canadian Union of Public Employees and its Local 1479." (26 employees in the unit).

Number of names of persons on voters' list		24
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	2	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6602-74-R: Office and Professional Employees International Union (Applicant) v. Sydenham District Hospital (Respondent) v. Ontario Nurses' Association (Intervener).

Unit #2: "all persons regularly employed for not more than twenty-four hours per week by the Hospital at Wallaceburg and students employed during the school vacation period save and except employees for whom bargaining rights are held by the Ontario Nurses' Association and Service Employees International Union Local 210." (11 employees in the unit).

Number of names of persons on voters' list		12
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	4	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6652-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Barrie (Respondent).

Unit: "all employees of the respondent in the city of Barrie, save and except office, clerical and technical employees persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods and persons covered by a subsisting collective agreement." (21 employees in the unit).

Number of persons on voters' list at start of vote		21
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	15	
Number of ballots marked against applicant	4	

6676-74-R: Service Employees Union Local 268 (Applicant) v. The McCausland Hospital (Respondent).

Unit: "all employees of the respondent at Terrace Bay regularly employed for not more than 24 hours per week, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office staff, and students employed during the school vacation period." (8 employees in the unit).

Number of names of persons on revised voters' list		10
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	10	
Number of ballots marked in favour of respondent	0	

6715-74-R: Canadian Union of General Employees (Applicant) v. Hillcrest Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Toronto, Ontario, save and except supervisors, persons above the rank of supervisor, professional staff, medical staff, graduate and registered nurses, student nurses, graduate pharmacists, graduate dietitians, students dietitians, technical personnel, social workers, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (30 employees in the unit). (...THE BOARD FURTHER FINDS THAT REGISTERED NURSING ASSISTANTS ARE INCLUDED IN THE APPROPRIATE BARGAINING UNIT. ...).

Number of names of persons on voters' list		26
Number of persons who cast ballots	21	
Number of ballots marked in favour of applicant	14	
Number of ballots marked against applicant	7	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

No Vote Conducted

2234-72-R: Sheet Metal Workers International Association, Local Union #285 (Applicant) v. Applewood Air-Conditioning Limited (Respondent). (7 employees).

5811-74-R: Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, and 3233 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. McNamara Corporation Limited, 271271 Ontario Ltd. (Respondent). (2 employees).

5828-74-R: International Brotherhood of Painters & Allied Trades Local 200 (Applicant) v. D. H. I. Limited (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Intervener). (9 employees).

6604-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. The Board of Education for the City of Toronto (Respondent) v. Operative Plasterers and Cement Masons' International Association of the United States and Canada, Local 598 (Intervener #1) v. Operative Plasterers and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #2). (18 employees).

6739-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Victoria Hospital Corporation (Respondent) v. London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Intervener). (10 employees).

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6879-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Grant Ready Mix Ltd. (Respondent) v. Group of Employees (Objectors). (10 employees).

6895-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cornwall Gravel Co. Ltd. (Respondent). (6 employees).

6935-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. K. H. Preston Const. Limited (Respondent) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Intervener). (5 employees).

6957-74-R: Tobacco Workers, International Union (Applicant) v. Simcoe Leaf Tobacco Company Limited (Respondent).

Unit: "all employees of the company employed in its plant at Simcoe, Ontario, save and except foremen and persons above the rank of foreman, office and clerical employees, sales and buying staff, persons employed less than 24 hours per week and students employed in the school vacation period." (359 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6962-74-R: The United Brotherhood of Carpenters and Joiners of America, Local 2466 (Applicant) v. Adam Clark Company Ltd. (Respondent). (6 employees).

6983-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the Borough of York (Respondent). (9 employees).

6995-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the City of Toronto (Respondent) v. Group of Employees (Objectors). (114 employees).

6997-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the Borough of North York (Respondent). (54 employees).

6998-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the Borough of East York (Respondent). (4 employees).

6999-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Board of Education for the Borough of Etobicoke (Respondent). (16 employees).

7000-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Metropolitan Toronto School Board (Respondent). (3 employees).

7013-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Lambert-Hoppen, Division of Despatch Industries Inc. (Respondent) v. Sheet Metal Workers' International Association, Local Union #540 (Intervener). (no employees).

7088-74-R: Local Union 800 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. I. B. Mechanical & Electrical Co. (Respondent). (4 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

6750-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Hanover and District Hospital (Respondent).

Voting Constituency: "All employees of the respondent in Hanover, Ontario, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student and undergraduate dietitians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (83 employees).

Number of names of persons on revised voters' list		77
Number of persons who cast ballots	70	
Number of ballots marked in favour of applicant	31	
Number of ballots marked against applicant	39	

6751-74-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Dempster's Bread, Division of Corporate Foods Ltd. (Respondent) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener).

Voting Constituency: "All employees of the respondent at Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, office staff and persons regularly employed for not more than twenty-four hours per week." (378 employees).

Number of names of persons on revised voters' list		301
Number of persons who cast ballots	276	
Number of spoiled ballots	6	
Number of ballots marked in favour of applicant	86	
Number of ballots marked in favour of intervener	184	

6757-74-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Emco Supply Division of Emco Limited (Respondent).

Voting Constituency: "All employees of the respondent company in Metropolitan Toronto save and except foremen, those above the rank of foreman, office and sales staff." (83 employees). (... THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.).

Number of names of persons on voters' list		82
Number of persons who cast ballots	77	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	69	

6788-74-R: Textile Workers Union of America, CLC, AFL-CIO (Applicant) v. Burlington Carpet Mills Canada Ltd. (Respondent).

Voting Constituency: "All employees of the respondent in its plant in the Township of Chinguacousy, save and except foremen and foreladies, persons above the rank of foreman and forelady, office and clerical staff, sales staff, technical staff, employees regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (260 employees).

Number of names of persons on voters' list		253
Number of persons who cast ballots	241	
Number of spoiled ballots	8	
Number of ballots marked in favour of applicant	75	
Number of ballots marked against applicant	158	

6789-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Nationwide Services Electric Limited (Respondent).

Voting Constituency: "All employees of the respondent in the City of Peterborough, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (17 employees). (... THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.).

Number of names of persons on voters' list		16
Number of persons who cast ballots	16	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	8	

6791-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Elgin Labour Club (Respondent).

Voting Constituency: "All employees of the respondent at St. Thomas, save and except persons employed for not more than twenty-four hours per week." (3 employees).

Number of names of persons on voters' list		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	2	

Certification Dismissed Subsequent to Post-Hearing Vote

5455-74-R: United Electrical, Radio and Machine Workers of America, (UE) (Applicant) v. Sargent and Company (Canada) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees employed by the respondent in Peterborough, save and except supervisors, persons above the rank of supervisor and the bookkeeper." (11 employees in the unit). (FOR THE PURPOSES OF CLARIFICATION, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT OUTSIDE SALES REPRESENTATIVES ARE EXCLUDED FROM THE BARGAINING UNIT.).

Number of names of persons on revised voters' list		12
Number of persons who cast ballots	12	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	9	

5663-74-R: Ontario Nurses' Association (Applicant) v. South Huron Hospital Association (Respondent).

Unit #2: "all registered and graduate nurses regularly employed by the respondent at Exeter, for not more than 24 hours per week, engaged in a nursing capacity, save and except supervisors and persons above the rank of supervisor." (3 employees in the unit).

Number of names of persons on revised voters' list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	3	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6644-74-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Burns Transport Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at or out of Halton Hills, Ontario, save and except foremen, dispatchers, persons above the rank of foreman and dispatcher, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (17 employees in the unit).

Number of names of persons on voters' list		15
Number of persons who cast ballots	15	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	13	

6673-74-R: United Steelworkers of America (Applicant) v. Canada Carbon and Ribbon Company Limited (Respondent).

Unit #2: "all employees of the respondent in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen, persons above the rank of foreman, office and sales staff." (4 employees in the unit).

Number of names of persons on voters' list		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	3	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6720-74-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Porta-Mix Concrete Products Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at and out of Parkhead, save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	2	

6721-74-R: Teamsters, Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. E. C. King Contracting Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged in the production and hauling of materials at and out of Owen Sound, save and except foremen, persons above the rank of foreman, office and sales staff." (80 employees in the unit).

Number of names of persons on voters' list		35
Number of persons who cast ballots	35	
Ballots segregated and not counted	4	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	23	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

5658-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Praetor Enterprises Limited (Respondent). (15 employees).

6513-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Provincial Property Management Limited and York Condominium Corporation No. 26 (Respondents). (not stated employees).

6517-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Peel Condominium Corporation No. 30, and Provincial Property Management Limited (Respondents). (not stated employees).

6863-74-R: International Alliance Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58 Toronto (Applicant) v. Canadian Pacific Hotels Limited, as owner and operator of the Royal York Hotel (Respondent) v. Hotel and Club Employees' Union, Local 299 (Intervener). (2 employees).

6869-74-R: Laborers' International Union of North America Local Union No. 597 (Applicant) v. Casey Hewson Construction Ltd. (Respondent). (4 employees).

6893-74-R: International Molders & Allied Workers Union (Applicant) v. Canron Limited, Eastern Structural Division (Respondent). (57 employees).

6917-74-R: Retail Clerks Union, Local 486 (Applicant) v. Ottawa Beef Company Limited (Respondent). (38 employees).

6920-74-R: Federal Labour Union, No. 24762, C.L.C. (Applicant) v. Sunbeam Corporation (Canada) Limited (Respondent). (38 employees).

6923-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bandiera & Associates Toronto Limited (Respondent). (4 employees).

6955-74-R: Labourers' International Union of North America - Local 1081 (Applicant) v. E. & E. Seegmiller Limited (Respondent). (25 employees).

6965-74-R: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 124 (Applicant) v. Hull-Ottawa Drywall Construction Co. Ltee (Respondent). (14 employees).

6974-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Clow Darling Plumbing & Heating Company Limited (Respondent). (2 employees).

6982-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Canadian Engineering & Contracting Ltd. (Respondent). (2 employees).

6984-74-R: United Steelworkers of America (Applicant) v. Aurora Tool (Respondent) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Intervener). (34 employees).

6990-74-R: Association of Commercial & Technical Employees, Local 1704, C.L.C. (Applicant) v. Kroehler Mfg. Co. Limited (Respondent). (61 employees).

7011-74-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. The Frid Construction Co. Limited (Respondent). (9 employees).

7031-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. Rapistan Canada Limited (Respondent). (2 employees).

7058-74-R: Labourers' International Union of North America, Local 493 (Applicant) v. Armbro Materials And Construction (Respondent). (3 employees).

7068-74-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 666 (Applicant) v. Regional Plumbing and Heating Limited (Respondent). (5 employees).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

DECEMBER

6349-74-R: Ontario Nurses' Association (Applicant) v. Kingston, Frontenac and Lennox and Addington Health Unit (Respondent). (GRANTED).

6351-74-R: Ontario Nurses' Association (Applicant) v. Chrysler Canada Limited (Respondent). (GRANTED).

6366-74-R: Ontario Nurses' Association (Applicant) v. The Sisters of St. Joseph of the Diocese of London (Respondent). (GRANTED).

6368-74-R: Ontario Nurses' Association (Applicant) v. Peel Memorial Hospital (Respondent). (GRANTED).

6497-74-R: Ontario Nurses' Association (Applicant) v. Chrysler Canada Limited (Respondent). (GRANTED).

6571-74-R: Luggage, Leather, Vinyl Workers' Union, Local 19, of the International Leather Goods, Plastics and Novelty Workers' Union (C.L.C., AFL-CIO) (Applicant) v. Carson Luggage of Canada Limited (Respondent). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

DECEMBER

6741-74-U: Domtar Packaging Limited (Applicant) v. Canadian Paperworkers Union, and its Local 528, Red Dock, Ontario (Respondent). (GRANTED).

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7037-74-U: Citi Centre Peterborough Limited (Applicant) v. Max McDavid and persons listed on attached sheet and Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondents). (WITHDRAWN).

7038-74-U: Citi Centre Peterborough Limited (Applicant) v. Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

6797-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (DISMISSED).

6798-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (GRANTED).

6808-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (DISMISSED).

6809-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (DISMISSED).

6810-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (DISMISSED).

6828-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -

6829-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -

6830-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -

6831-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -

6832-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (DISMISSED).

6886-74-U: Labourers' International Union of North America, Local 183 (Applicant) v. Temperature Specialties Manufacturers Limited, T. A. Lucas, Michael Orlock, Joseph Morgan and George Elliot (Respondents). (WITHDRAWN).

6930-74-U: Canadian Union of Public Employees (Applicant) v. Big Brothers Movement of Toronto (Respondent). (TERMINATED).

6986-74-U: CSAO Inc. (Applicant) v. Suburban Ambulance Service (Respondent). (WITHDRAWN). -

7039-74-U: Citi Centre Peterborough Limited (Applicant) v. Max McDavid (Respondent). (WITHDRAWN).

7040-74-U: Citi Centre Peterborough Limited (Applicant) v. Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING
DECEMBER

2950-72-U: CSAO National (Inc.) (Complainant) v. Ottawa General Hospital (Respondent). (WITHDRAWN).

6522-74-U: C.U.P.E. Local 1394 (Complainant) v. Villa Centres Limited (Respondent). (WITHDRAWN).

6523-74-U: CUPE Local 1394 (Complainant) v. Villa Centres Limited (Respondent). (WITHDRAWN).

6537-74-U: John (Hanna) Bachir (Complainant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Respondent). (DISMISSED).

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6716-74-U: United Steelworkers of America (Complainant) v. Ramset Limited (Respondent). (WITHDRAWN).

6742-74-U: Frederick H. Hardy (Complainant) v. Shop-Rite Catalogue Stores (Respondent). (DISMISSED).

6842-74-U: United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 527 (Complainant) v. North Eastern Mechanical Contracting Ltd. (Respondent). (WITHDRAWN).

6864-74-U: Harry Carter, Albert Delaurier, Rene Laurin, Raoul Martineau (Complainants) v. Canadian Paper Worker's Union Local 90, Abitibi Paper Co. (Respondents). (DISMISSED).

6874-74-U: Labourers' International Union of North America, Local 183 (Complainant) v. Avena Investments Ltd. (Respondent). (WITHDRAWN).

6887-74-U: Labourers' International Union of North America, Local 183 (Complainant) v. Temperature Specialties Manufacturers Limited, T. A. Lucas, Michael Orlock, Joseph Morgan and George Elliot (Respondents). (WITHDRAWN).

6960-74-U: Teamsters' Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Peoples Movers and Cartage Ltd. (Respondent). (DISMISSED).

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6862-74-M: Laundry, Dry Cleaning and Dye House Workers' International Union, Local 351, Hotel & Club Workers Division (Trade Union) v. Hyatt Regency Hotel Toronto (Employer). (GRANTED).

6875-74-M: Canadian Food & Allied Workers Local P-1230 (Trade Union) v. General Foods, Limited, Cobourg, Ontario (Employer). (GRANTED).

6876-74-M: International Union of Operating Engineers Local 796 (Trade Union) v. St. Joseph's General Hospital, Elliot Lake (Employer). (GRANTED).

6892-74-M: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (Trade Union) v. The Women's Christian Association of London owning and operating McCormick Home for Aged (Employer). (GRANTED).

6908-74-M: London and District Building Service Workers' Union Local 220, S.E.I.U.-A.F. of L.-C.I.O.-C.L.C. (Trade Union) v. Parkwood Hospital, The Women's Christian Association of London (Employer). (GRANTED).

6910-74-M: International Union of Operating Engineers Local 796 (Trade Union) v. St. Francis General Hospital, Smiths Falls, Ontario (Employer). (GRANTED).

6912-74-M: Civil Service Association of Ontario (Trade Union) v. General Hospital of Port Arthur (Employer). (GRANTED).

6927-74-M: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Trade Union) v. Giordano Sand & Gravel Limited (Employer). (GRANTED).

6931-74-M: The Hotel and Club Employees' Union, Local 299, of the Hotel and Restaurant Employees & Bartenders International Union (Trade Union) v. Sheraton Limited (King Edward Sheraton Hotel), a Company existing under the laws of the Dominion of Canada (Employer). (GRANTED).

6932-74-M: Laundry, Dry Cleaning and Dye House Workers' International Union, Local 351 (Trade Union) v. Stericloth Products Company Limited (Employer). (GRANTED).

6953-74-M: International Association of Machinists and Aerospace Workers (Trade Union) v. McGraw-Edison of Canada Limited Laundry Machinery Division (Employer). (GRANTED).

6959-74-M: Service Employees Union, Local 210 (Trade Union) v. Windsor Western Hospital Centre, Inc. (Employer). (GRANTED).

6973-74-M: Canadian Food and Allied Workers Local P-1230 (Trade Union) v. General Foods, Limited, Cobourg, Ontario (Employer). (GRANTED).

6980-74-M: United Brotherhood of Carpenters and Joiners of America District Council of Toronto and Vicinity (Trade Union) v. The Governing Council of the University of Toronto (Employer). (GRANTED).

6992-74-M: Canadian Union of Public Employees, Local #161, C.L.C. (Trade Union) v. Modern Building Cleaning, Division of Dustbane Enterprises Limited (Employer). (GRANTED).

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6792-74-M: The Canadian Union of Public Employees, Local 1530 (Applicant) v. The Corporation of the County of Grey (Respondent). (AFFIRMATIVE).

6804-74-M: London and District Building Service Workers' Union Local 220, S.E.I.U. (Applicant) v. St. Raphael's Nursing Homes Limited (Respondent). (AFFIRMATIVE).

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2845-72-R: Toronto Sheet Metal and Air Handling Group (Applicant) v. Sheet Metal Workers' International Association, Local Union #30 (Respondent) v. Stainless Steel Equipment Manufacturers at al (Intervener #1) v. Residential Sheet Metal Contractors Organization (Intervener #2). (REQUEST DENIED)

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6859-74-R: Graphic Arts International Union Local 224 (Applicant) v. Beauregard Press Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

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APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	Number Filed		
	3rd Quarter ¹	1st 9 Months Fiscal Year	
	Fiscal Year 1974-75	1974-75	1973-74
I. Certification	362	1051	1020
II. Declaration Terminating Bargaining Rights	13	34	50
III. Declaration of Successor Status	7	31	26
IV. Declaration that Strike Unlawful	30	86	34
V. Declaration that Lock- Out Unlawful	5	6	3
VI. Consent to Prosecute	40	116	74
VII. Complaint of Unfair Practice in Employment (Section 79)	41	124	154
VIII. Miscellaneous	<u>67</u>	<u>238</u>	<u>78</u>
TOTAL	<u>565</u>	<u>1686</u>	<u>1439</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	3rd Quarter	1st 9 Months Fiscal Year	
	Fiscal Year 1974-75	1974-75	1973-74
Hearings and Continuation of Hearings by the Board	365	1006	972

¹ October to December.

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	Number Disposed of		
	3rd Quarter	1st 9 Months	Fiscal Year
	Fiscal Year 1974-75	1974-75	1973-74
I. Certification	391	1111	1022
II. Declaration Terminating Bargaining Rights	6	35	40
III. Declaration of Successor Status	12	20	31
IV. Declaration that Strike Unlawful	32	75	32
V. Declaration that Lock-Out Unlawful	-	2	3
VI. Consent to Prosecute	35	103	75
VII. Complaint of Unfair Practice in Employment (Section 79)	46	154	163
VIII. Miscellaneous	<u>88</u>	<u>235</u>	<u>61</u>
TOTAL	<u>610</u>	<u>1735</u>	<u>1427</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

Number of Applications			Number of Employees*		
3rd Quarter Fiscal Year	1st 9 Mths. F.Y.		3rd Quarter Fiscal Year	1st 9 Mths. F.Y.	
1974-75	1974-75	1973-74	1974-75	1974-75	1973-74

I. Certification

Granted	245	741	685	7144	23182	29093
Dismissed	88	247	226	3998	14328	9727
Withdrawn	58	123	111	1177	3183	2430
TOTAL	391	1111	1022	12319	40693	41250
	==	==	==	==	==	==

II. Termination
of Bargaining
Rights

Granted	1	13	22	21	301	1069
Dismissed	5	19	18	38	496	1657
Withdrawn	-	3	-	-	1355	-
TOTAL	6	35	40	59	2152	2726
	==	==	==	==	==	==

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

	Number of Applications		
	3rd Quarter	1st 9 Months	Fiscal Year
	Fiscal Year 1974-75	1974-75	1973-74
III. <u>Declaration that Strike</u> <u>Unlawful</u>			
Granted	4	10	3
Dismissed	5	18	5
Withdrawn	<u>23</u>	<u>47</u>	<u>24</u>
TOTAL	<u>32</u>	<u>75</u>	<u>32</u>
IV. <u>Declaration that Lock-Out</u> <u>Unlawful</u>			
Granted	-	-	-
Dismissed	-	2	3
Withdrawn	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u>-</u>	<u>2</u>	<u>3</u>
V. <u>Consent to Prosecute</u>			
Granted	2	9	13
Dismissed	12	24	13
Withdrawn	<u>21</u>	<u>70</u>	<u>49</u>
TOTAL	<u>35</u>	<u>103</u>	<u>75</u>
VI. <u>Complaint of Unfair</u> <u>Practice in Employment</u> <u>(Section 79)</u>			
Granted	1	7	12
Dismissed	20	71	56
Withdrawn	<u>25</u>	<u>76</u>	<u>95</u>
TOTAL	<u>46</u>	<u>154</u>	<u>163</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Applications		
	3rd Quarter	1st 9 Months Fiscal Year	
	Fiscal Year 1974-75	1974-75	1973-74
<u>Certification after vote*</u>			
Pre-Hearing Vote	20	47	56
Post-Hearing Vote	22	75	73
Ballots not Counted	-	-	-
 <u>Dismissed after vote</u>			
Pre-Hearing Vote	19	66	35
Post-Hearing Vote	21	46	36
Ballots not Counted	<u>1</u>	<u>2</u>	<u>3</u>
TOTAL	<u>83</u>	<u>236</u>	<u>203</u>

*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	3rd Quarter	1st 9 Months Fiscal Year	
	Fiscal Year 1974-75	1974-75	1973-74
*Respondent Union Successful	1	4	3
Respondent Union Unsuccessful	<u>1</u>	<u>11</u>	<u>13</u>
TOTAL	<u>2</u>	<u>15</u>	<u>16</u>

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

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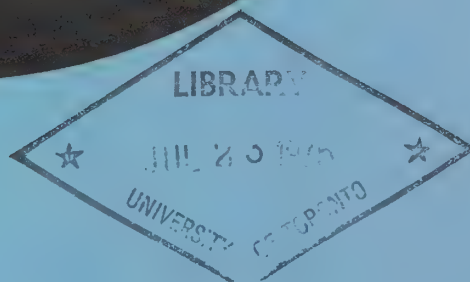
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S5 - Whether application timely - Bargaining Unit - Effect of
clarity note added to a craft unit of painters and painters
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INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES,
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THE NORFOLK HOSPITAL ASSOCIATION v. JOHN M. ASKIN....(Nov.) p. 838

Constitutional Law - Jurisdiction - British North America Act (1867) - S92(13) - Effect of presumption of provincial supremacy over property and civil rights - Effect of construction industry project located on lands subject to Indian Reserves as defined in The Indian Act R.S.C. c 149 - Whether provincial labour statutes are laws of general application inconsistent with any terms of The Indian Act or any rule, order regulation or by-law made thereto - Effect of employees engaging Indians as employees on the project - Whether the project a integral part of or necessarily incidental to a federal work or undertaking - Whether the labour relations of the employer and employees governed by the terms of The Canada Labour Code.

LOCAL UNION 800 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA v. YELLOW JACKET WELDING COMPANY LIMITED..... (Oct.) p. 709

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TEAMSTERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. CENTEAST AUTO TERMINALS LTD. v. CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS v. GROUP OF EMPLOYEES..... (Feb.) p. 67

Constitutional Law - Jurisdiction - "Feed warehouses" - British North America Act (1867) - Whether employees in the employ of an employer whose work or undertaking is declared for the general advantage of CANADA - Effect of CANADIAN Wheat Board Act R.S.O. 1970 c12 S45.

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THE CANADIAN TRANSPORTATION WORKERS UNION #200, NATIONAL COUNCIL OF CANADIAN LABOUR v. DRY BULK FORWARDERS LTD. v. TEAMSTERS LOCAL 879 AND TEAMSTERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Sep.) p. 628

Constitutional Law - Jurisdiction - S92(10)(a) - B.N.A. Act - Effect of engagement by a steamship company of an agency employing "ship chandlers" - Whether services extended an integral part of or necessarily incidental to a federal undertaking - Whether a mere convenience to that undertaking - Whether Board to entertain the application.

TEAMSTERS INTERNATIONAL UNION LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. NORTH SHORE SUPPLY CO. LTD. v. GROUP OF EMPLOYEES..... (Jul.) p. 446

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Constitutional Law - Natural Justice - Adjournment - Jurisdiction - Effect of failure to notify a party in advance of intention to raise a jurisdictional issue - Effect of catching a party by surprise - Whether an adjournment appropriate.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. MAPLE LEAF MILLS LIMITED; MASTER FEEDS BRANCH, LONDON, ONTARIO.. (Oct.) p. 640

Construction Industry - Appropriateness - Effect of distinctions in describing the appropriate unit with respect to an application for certification involving two locals of the Labourer's Union - Whether distinctions still viable - Whether the Board to vary its policy - Effect of past bargaining patterns in determining the appropriate unit - Effect of Board aversion in the construction industry to describing the appropriate unit in "all employee" terms - S6(2) - Whether exceptional circumstances in the situation before the Board - Whether Board to exercise its discretion - Effect of "the mixed crew" operating on a construction project in describing the appropriate unit.

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Construction Industry - Bargaining Unit - Labourer's unit in geographic area #9 - Whether a past pattern of bargaining to justify restricting the bargaining unit to the residential sector.

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S107 - EFFECT OF AN APPLICANT BEING ELIGIBLE TO APPLY UNDER
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- S92(4) - WHETHER A CAPACITY TO REPRESENT - EFFECT ON THE
APPROPRIATE BARGAINING UNIT.

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CONSTRUCTION INDUSTRY - BARGAINING UNIT - S108(1) - WHETHER BOARD
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appropriate unit is confined to employees that fall within
a craft for purposes of S6(2) - Whether a finding of appro-
priateness of the unit may be made pursuant to S6(1) of the
Act - S108 - Whether an application pursuant to the con-
struction industry provisions of the Act.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL
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Construction Industry - Bargaining Unit - S6(1) - Whether Board
to limit description of the bargaining unit to "all labourers
...engaged in the installations of sewers and watermains" -
S91(13) - Whether Board to direct a hearing.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493
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Construction Industry - Collective Agreement - Bargaining Unit -
S1(1)(h) - Effect of onus on an employer's association to establish
that it has status for purposes of the Act - Whether a
proper party to a collective agreement - Effect of individual
employer signatures on the document - Whether sufficient to
constitute a party - S35(1) - Effect of an absence of a
recognition clause in the collective agreement - Whether
one may be determined by implication from other terms of
the agreement - S45(1)(2) - Effect of an automatic renewal
clause foreclosing notice within 3 months from the date of
expiry of the collective agreement - S15(2) - Whether the
parties have waived the requirements for written notice -
S5 - Whether application timely - Bargaining Unit - Effect of
clarity note added to a craft unit of painters and painters
apprentices.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES,
LOCAL UNION 1891 v. CEM-AL SPRAY LIMITED v. OPERATIVE
PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION
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Construction Industry - Collective Agreement - Natural Justice -
 Adjournment - Whether a party prejudiced by failure of
 the Board to extend formal notice of the hearing - Effect
 on the party requesting an adjournment - Whether the party
 requesting the adjournment intervened in the proceedings
 prior to the hearing - S71(2) of The Board's Rules -
 Whether the intervener under the Boards Rules of Procedure
 was entitled to notice - Whether the party is prejudiced
 to be determined during the course of the hearing - Effect
 of that party withdrawing from the proceedings - S52 -
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INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNA-
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 LIMITED..... (Mar.) p. 164

Construction Industry - Employees - "aluminum siding contractors"
 - Whether an employer-employee relationship - Whether inde-
 pendent contractor - Effect of ultimate "control" over the
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UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
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Construction Industry - Employees - S106(b) - Whether labourers
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 site - Effect of short term casual nature of site work -
 S1(3)(b) - Non-working foreman - Whether they exercise
 managerial functions - Whether a sufficient degree of in-
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 Effect of common law master-servant relationship - S1(1)(f) -
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 is engaged in business pertaining to the construction
 industry.

CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY ON
 BEHALF OF LOCALS 27, 666, 681, 1133, 1963, 3227 AND 3233,
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Construction Industry - S6(2) - Craft unit - Operating engineers
- Whether work performed and equipment used falls under the
normal operating engineer bargaining unit - Definition of
"similar equipment" - Whether there are any employees in
the unit as of the date of the application.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
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Construction Industry - S123 - Strike - Effect of failing to
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S98 of the Board's Rules on Procedure - S65 - Effect of
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trade union did counsel, procure, support or encourage an
unlawful strike - Whether injunctive relief appropriate.

NORONT STEEL LIMITED v. INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS
AND HELPERS, LOCAL 128 AND THE INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL
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Construction Industry - Strike - S1(1)(m) - Whether "a slow down"
amounts to concerted activity amounting to a strike -
Whether picket line set up at the employer's project was
designed to limit or restrict output - S63 - Whether strike
was unlawful - S123 - Whether the Board in the exercise of
its discretion to issue a cease and desist order.

WHEELABRATOR CORPORATION OF CANADA LIMITED v. FRANK
HOLBURN.....(Jul.) p. 490

Construction Industry - Strike - S123 - Effect of strike over a
work assignment dispute - Whether Board has been satisfied
of the requisites for purposes of making a declaration.

THE WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL
562 v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL 18 AND JACK TARBUTT.....(Feb.) p. 99

Construction Industry - Termination - S49(1) - Effect of applica-
tion made within a year of the Board's certificate granting
bargaining rights - Whether application timely - Effect of
timeliness issue had the application been filed pursuant to
section S112(1) of the Act - Whether the parties prepared
to make representations on the issue.

EMPLOYEES OF S. HENRY & SONS v. LABOURERS INTERNATIONAL
UNION OF NORTH AMERICA, LOCAL 527 v. S. HENRY & SONS CO.
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Discharge For Union Activity - Employee - S79 - S1(3)(b) - "charge technologists" - Effect of "titles" in determining the exercise of managerial functions - Effect of performing bargaining unit work a majority of the time - Effect of impact of isolated incidents of exercising supervisory duties - Whether duties of "charge technologists" analagous to functions of a "lead hand" or "a working foreman" - S61 - S58(a) - Whether in any event a person exercising managerial functions has rights under the L.R. Act with respect to trade union activity - S80 - Whether a restrictive or expansive interpretation attached to the word "person".

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Discharge For Union Activity - S79 - S58(a) - Whether a case in support of the allegations made out - Effect of onus of proof in complaints alleging violation of an unfair labour practice provision of the Act.

INTERNATIONAL WOODWORKERS OF AMERICA v. BOYLE-MIDWAY (CANADA) LIMITED..... (Sep.) p. 573

Discharge For Union Activity - S79 - S58(a) - Whether discharge for participation in a lawful strike - Effect of temporary nature of employment status - Whether failure to re-employ a facture in establishing the grievor's case - Effect of failure to satisfy evidentiary burden.

WALTER C. SARICH v. CORPORATION OF THE CITY OF SAULT STE. MARIE, ONTARIO.....(Aug.) p. 523

Discharge for Union Activity - S79 - S58(a) - Whether the Board is satisfied on the balance of probabilities that "one of the reasons for the discharges was the union activity of the complainant - Effect of union activity being only a contributing factor to the discharge.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. DELHI METAL PRODUCTS LIMITED.....(Jul.) p. 450

Discharge for Union Activity - S79 - S58(a) - Whether union activity need be the "sole" reason for the discharge in order to satisfy the Board of a violation - Whether union activity played a party however proximate in the discharge - Effect of immediacy of the discharge after the alleged union activity.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. FRUE-HALF TRAILER COMPANY OF CANADA LIMITED..... (Jul.) p. 474

Duty of Fair Representation - Jurisdiction - S79 - S60 -
 "employees in a bargaining unit" - Whether members in good standing may hold the trade union representative accountable through the duty of fair representation for the manner in which it operates "the hiring hall" provisions of a collective agreement - Effect of the nature of a union security clause - Whether members need be employees in a bargaining unit."

ARTHUR JOSEPH ROBERTS v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48.....(Mar.) p. 169

Duty of Fair Representation - Reconsideration - S95(1) -
 Whether an exceptional circumstance exists to justify reconsideration - S60 - Whether due inquiry into the merits of the grievance is relevant to a violation of S60 of the Act - Effect of the merits of the grievance in determining an appropriate remedy.

WARD SHELLINGTON AND THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED, TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323, CHARLES HILL, ALEXANDER JACKSON, SYDNEY HARKER, JOHN WYND, ALBERT BATTELL, ANSTRUTHER WILLIAMSON, GEORGE JONES, HARVEY STEWART, LESLIE COOK AND BRUCE STARKEY..(Sep.) p. 609

Duty of Fair Representation - S79 - Constitutional Law - Jurisdiction - Whether the Board may entertain a complaint alleging violation of S60 - Effect of nature of the undertaking - Whether it falls under the provisions of S92(10)(a) of The B.N.A. Act.

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Duty of Fair Representation - S79 - DUAL UNIONISM - Effect of failure to adduce compellable circumstantial or direct evidence in support of the allegations - S60 - Effect of failure to file a grievance with respect to the discharge from employment - Whether trade union in violation of duty of fair representation - S38(2) - Effect of deception by the grievor in holding two jobs on false pretences - Whether credibility a cogent factor in assessing the grievors evidence - Effect on "conspiracy theory" - Effect of failure to file particulars - Whether the Board to permit an amendment to the allegations.

JOHN (HANNA) BACHIR v. INTERNATIONAL BROTHERHOOD OF BOILER-MAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL 128.....(Dec.) p. 850

Duty of Fair Representation - S79 - Lay-off - Effect of trade union adhering to past policy practice in placing members on jobs in accordance with the union hiring hall provision contained in a collective agreement - S60 - Whether trade union reaction to lay-off of the grievor in violation of its duty of fair representation.

MR. ANGELO COLACCI v. LOCAL 46 OF PLUMBERS & STEAMFITTERS UNION..... (Sep.) p. 615

Duty of Fair Representation - S79 - S60 - Effect of a Board decision deferring a dispute to arbitration - Effect of subsequent events rendering arbitration superfluous - Whether continuance of the arbitration process an "academic exercise" - Whether the Board to reconsider its decision to defer to arbitration.

WARD SHELLINGTON AND THOSE PERSONS NAMED IN SCHEDULES "A" ATTACHED HERETO v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED, TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323, CHARLES HILL, ALEXANDER JACKSON, SYDNEY HARKER, JOHN WYND, ALBERT BATTELL, ANSTRUTHER WILLIAMSON, GEORGE JONES, HARVEY STEWART, LESLIE COOK AND BRUCE STARKEY.....(Oct.) p. 667

Duty of Fair Representation - S79 - S60 - Effect of failure of the complainant to adduce evidence in support of allegations of a breach by the respondent union of its duty of fair representation - Whether a prima facie case.

JOHN BELL v. AMALGAMATED METAL INDUSTRIES LIMITED and JOHN BELL v. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO..... (Apr.) p. 258

Duty of Fair Representation - S79 - S60 - Effect of lay-off under the terms of the collective agreement - Whether offer by the trade union to proceed to arbitration on a seniority grievance on the contingency that the grievor pay the expenses of the arbitration an abuse of the duty of fair representation - Effect of past precedent of settling matters relating to seniority.

KENNETH HUGHES v. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 922 AND THE BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK.....(May.) p. 283

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KARL KRAFCZEK v. THE UNITED STEELWORKERS OF AMERICA LOCAL
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Duty of Fair Representation - S79 - S60 - Whether handling of the grievor's complaint "arbitrary" within the meaning of section 60 - Tests cited - Whether representatives put their minds to the grievors complaint.

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Duty of Fair Representation - S79 - S79(1)(c) - S79(4)(c) - Whether the Board has a discretion to add "persons" other than a trade union or council of trade unions as a respondent party to a complaint alleging violation of S60 - Whether the Board will exercise its discretion to defer to the forum of arbitration to resolve the complainant's grievance - Effect of the positions taken by trade union and employer parties to the collective agreement - Whether the complainants are under a duty to exhaust remedies - Effect of an arbitration award on the continued viability of the complainant's allegations of a violation of section 60 - Whether the Board to defer to arbitration.

WARD SHELLINGTON AND THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED, LOCAL 323, CHARLES HILL, ALEXANDER JACKSON, SYDNEY HARKER, JOHN WYND, ALBERT BATTELL, ANSTRUTHER WILLIAMSON, GEORGE JONES, HARVEY STEWART, LESLIE COOK AND BRUCE STARKEY.....(Jul.) p. 418

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TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91,
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- Whether an employer-employee relationship - Whether independent contractor - Effect of ultimate "control" over the relationship residing in the respondent.

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LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527
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CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS 27, 666, 681, 1133, 1963, 3227 AND 3233, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA V. GROUP THIRTY THREE LIMITED.....(Dec.) p. 888

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Employee - Practice - Effect of a party failing to attend an examiners meeting - Whether notice of the meeting conferred - Whether a reasonable excuse for non-attendance - Effect on the weight of the examiner's report.

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ONTARIO NURSES' ASSOCIATION v. SUDBURY MEMORIAL HOSPITAL.....(Dec.)p.871

Employees - Procedure - S1(3)(b) - Whether Board to determine issue of a challenge to the status of an employee by reference to the evidence contained in an examiners report in another case - Whether changes in duties and responsibilities since date of the examiners report - Effect of in prior ruling arising from that report.

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EMPLOYEE - REFERENCE - S95(2) - S1(3)(B) - WHETHER APPLICATION PREMATURE - EFFECT OF EMPLOYEES IN DISPUTE NOT ASSUMING FULL DUTIES AND RESPONSIBILITIES - WHETHER GROUNDS FOR DEFERRING APPLICATION.

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CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #1586 v. MEDEX NURSING CENTRE-OSHAWA..... (Mar.) p. 113

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MARGARET WARK, ON BEHALF OF HERSELF AND OTHER EMPLOYEES OF PARKER'S DYE WORKS & CLEANERS LIMITED; TORONTO, CARRYING ON BUSINESS UNDER THE NAME OF PARKERS THE "SPICK & SPAN" CLEANERS" v. LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 v. PARKER'S DYE WORKS & CLEANERS LIMITED, TORONTO.....(Dec.) p. 859

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CANADIAN UNION OF PUBLIC EMPLOYEES v. THE BOARD OF PARK MANAGEMENT OF THE CITY OF BELLEVILLE.....(Apr.) p. 219

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UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 v. TEMPLET SERVICES.....(Sep.) p. 606

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DOROTHY HALL v. LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' & BARTENDERS' UNION OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F. OF L., C.I.O., C.L.C. v. KILGORAN HOTELS LIMITED CARRYING ON BUSINESS AS YE OLDE BRUNSWICK TAVERN.....(Nov.) p. 804

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Jurisdiction - Constitutional Law - British North America Act (1867) - S92(13) - Effect of presumption of provincial supremacy over property and civil rights - Effect of construction industry project located on lands subject to Indian Reserves as defined in The Indian Act R.S.C. c 149 - Whether provincial labour statutes are laws of general application inconsistent with any terms of The Indian Act or any rule, order regulation or by-law made thereto - Effect of employees engaging Indians as employees on the project - Whether the project a integral part of or necessarily incidental to a federal work or undertaking - Whether the labour relations of the employer and employees governed by the terms of The Canada Labour Code.

LOCAL UNION 800 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA v. YELLOW JACKET WELDING COMPANY LIMITED.....(Oct.) p. 709

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TEAMSTERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. CENTEAST AUTO TERMINALS LTD. v. CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS v. GROUP OF EMPLOYEES.....(Feb.) p. 67

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TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. MAPLE LEAF MILLS LIMITED; MASTER FEEDS BRANCH, LONDON, ONTARIO..(Nov.) p. 797

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 - Effect of failure to notify a party in advance of intention
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TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141,
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JOHN M. LUSSIER v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 and EDWIN STEVEN CURRIE v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46..... (Aug.) p. 569

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THE CANADIAN TRANSPORTATION WORKERS UNION #200, NATIONAL COUNCIL OF CANADIAN LABOUR v. DRY BULK FORWARDERS LTD. v. TEAMSTERS LOCAL 879 AND TEAMSTERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA..... (Sep.) p. 628

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Practice - Employees - Whether revealing to the applicant trade union the schedules of employees filed by the respondent employer at the examiner's inquiry is contrary to established Board practice and procedure - Effect of a Board direction authorizing the parties to inquire into the list and composition of the bargaining unit - Whether objection sustained.

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Practice - Membership Evidence - S1(1)(j) - "non-pay" - Effect of non-disclosure - Declaration concerning membership documents (FORM 8) - Whether declarant in not disclosing the non-pay has complied with the requirements of the Board - Effect of Board's strict standards.

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC v. CONSUMERS DISTRIBUTING COMPANY LIMITED v. GROUP OF EMPLOYEES..... (Jun.) p. 350

Practice - Reconsideration - S95(1) - Effect of the Board faced with an interpretation of The Lab. Rel. Act by another tribunal of inferior jurisdiction - Effect of a court of superior jurisdiction upholding the interpretation conferred by the court of inferior jurisdiction - Whether the Board bound to follow the interpretation of the court - S97 - Effect of the Board's immunity from review of its decision - Effect of permitting on appeal to a Board's decision other than by way of application for judicial review - Effect of The Judicial Review Procedure Act S.O. 1971 c. 48, S2.

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 - Effect of agreement of the parties with respect to the
 lists of employees - Whether any changes since the Board's
 decision on the evidence with respect to the duties and res-
 ponsibilities of the disputed persons - Whether a challenge in
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INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND
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BUILDING SERVICE EMPLOYEES, LOCAL 478 v. KIRKLAND AND DISTRICT HOSPITAL.....(Oct.) p. 654

Practice - Strike - Hospital Labour Disputes Arbitration Act - S8(1)(2) - Whether trade union liable under S65 of THE L.R.A. - S47 - Whether a party restricted in presentation of evidence by particulars filed in support of the application - Whether impugned evidence raises a new cause of action - Effect of waiver by another party - S82 - Whether Board to exercise its discretion in accordance with its past practice - Effect of condonation of the law.

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RETAIL CLERKS INTERNATIONAL ASSOCIATION v. SAYVETTE FAMILY DEPARTMENT STORE LTD.....(May.) p. 327

Privilege - Consent to Prosecute - S14 - Effect of nature of a violation of requirement to bargain in good faith - Whether a continuing violation - Effect on 6 month limitation period under the summary conviction proceedings of The Criminal Code - Whether the application is untimely - S100(2) - Extent of privilege with respect to communications to the conciliation officer - Whether a privative or non-privative matter subject to the privilege - Whether parties may waive the privilege - Effect of the standard of proof placed on a party alleging violation of provisions of the Act on consent proceedings - Whether analagous to a preliminary hearing on a criminal matter.

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Procedure - Effect of applicant's failure to attend a Board being with respect to an application for certification - S91(12) - Whether the effect of non-appearance is to incapacitate the Board from discharging its statutory duties under the Act - S95(1) - Whether the Board to reconsider its decision to dismiss the application.

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Procedure - Employees - S1(3)(b) - Whether Board to determine issue of a challenge to the status of an employee by reference to the evidence contained in an examiners report in another case - Whether changes in duties and responsibilities since date of the examiners report - Effect of in prior ruling arising from that report.

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Procedure - Evidence - S79 - Effect of rules regarding res judicata on a complaint filed under S79 of a like nature and purpose as a complaint heretofore dismissed by another panel of the Board.

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Procedure - Membership Evidence - Representation Vote - Charges - Effect of allegations of impropriety with respect to securing members during a trade union's organizational campaign - Whether a representation vote may be held concurrently with the investigation of the allegations - Whether to the prejudice of any party to the proceedings - Effect of sealing the ballot boxes.

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JOHN M. LUSSIER v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 and EDWIN STEVEN CURRIE v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46.....(Aug.) p. 569

Procedure - S92(2)(a) - Subpoena duces tecum - Whether Board will adopt a restrictive or flexible approach with respect to particularity - Whether the balance of convenience favours giving effect to the subpoena - Effect of criteria limiting an "open ended" subpoena set out.

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THE NORFOLK HOSPITAL ASSOCIATION v. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 S.E.I.U., A.F.L., C.I.O., C.L.C.....(Nov.) p. 842

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 LIMITED, TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323,
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 Whether exposure to confidential information integral
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 the initial hearing of the matter - Whether an employer may
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 - Effect of permitting on appeal to a Board's decision other
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The Judicial Review Procedure Act S.O. 1971 c. 48, S2.

UNITED RADIO ELECTRICAL AND MACHINE WORKERS OF AMERICA v.
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 on the status of employees as of the date of the initial
 application for relief - Effect of employees engaging in a
 lawful strike at the relevant date.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICUL-
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 NATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL
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REFERENCE - EMPLOYEE - S95(2) - S1(3)(b) - WHETHER APPLICATION
 PREMATURE - EFFECT OF EMPLOYEES IN DISPUTE NOT ASSUMING FULL
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UNITED STEELWORKERS OF AMERICA v. THE W. S. TYLER COMPANY
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Reference - Procedure - S95(2) - Whether examiner's direction to
 be confined to "changes in duties and responsibilities" -
 Whether applicable while the parties are negotiating
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 of "the question" - Whether the objection is timely -
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CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL 268 v.
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RELATED EMPLOYER - BARGAINING UNIT - S1(4) - WHETHER A NUMBER OF
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 S6(1) - EFFECT OF THE APPROPRIATE BARGAINING UNIT ON THE
 DETERMINATION - WHETHER A RELATED EMPLOYER MAY VERY WELL
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HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 v. FOREST
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Related Employer - Constitutional Law - Jurisdiction - THE BRITISH NORTH AMERICA ACT (1867) - Effect of a jurisdictional issue being placed before the C.L.R.B. - Whether the Board will defer its determination of the issue pending the outcome of the other tribunal - S1(4) - Effect of allegations of a sham corporation created to defeat bargaining rights - Effect on the jurisdictional issue - Whether issue is whether the respondent is in pith and substance an intra-provincial undertaking.

THE CANADIAN TRANSPORTATION WORKERS UNION #200, NATIONAL COUNCIL OF CANADIAN LABOUR v. DRY BULK FORWARDERS LTD. v. TEAMSTERS LOCAL 879 AND TEAMSTERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA..... (Sep.) p. 628

Related Employer - Natural Justice - Effect of related employers being treated as one - Whether notice extended one branch of the undertaking - Whether an adjournment appropriate in order to extend proper notice - Effect on the terminal date of the application for certification.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 478, AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. v. COCHRANE NURSING HOME LIMITED v. CIKENT CORPORATION LIMITED v. GROUP OF EMPLOYEES.....(Apr.) p. 204

Related Employer - Practice - S1(4) - Effect of motion to have two parties added to the proceedings - Whether parties related for purposes of the Act - Whether an examiner to inquire into the issue - Effect of prior examiner's inquiry - Whether the Board to rely on the report of the examiner.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 v. DEL ZOTTO ENTERPRISES LIMITED v. SARDINA INVESTMENTS LIMITED v. DEMIRO CONSTRUCTION LIMITED.....(Feb.) p. 78

Related Employer - Practice - S54 - Board's Rules of Procedure - S91(12) - Effect of the Board's plenary powers to make rules and regulations - Whether the Board may add interested persons as parties to the proceedings - Effect of relevance of section 93 - S1(1)(4) - Whether a sufficient common direction and control with respect to a number of entities to cause the Board to treat all as one employer for purposes of the Act.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 v. DEL ZOTTO ENTERPRISES LIMITED v. SARDINA INVESTMENTS LIMITED v. DEMIRO CONSTRUCTION LIMITED v. ELRU PAYROLL COMPANY LIMITED v. JANTRO CORPORATION LIMITED v. ZAPH CONSTRUCTION LIMITED.....(Aug.) p. 533

Related Employer - Sale of a Business - Reconsideration - S95(1)
 - Effect of an application for clarification of a Board
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 of a business transpired between two entities that carry
 on related activities within the meaning of the Act - Effect
 on the status of employees as of the date of the initial
 application for relief - Effect of employees engaging in a
 lawful strike at the relevant date.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICUL-
 TURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 984, INTER-
 NATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL
 IMPLEMENT WORKERS OF AMERICA (UAW) v. CANAC SHOCK ABSORBERS
 LIMITED v. CANADIAN ACME SCREW & GEAR LIMITED.....(Mar.) p. 131

Related Employer - Sale of a Business - S1(4) - Exercise of
 Board discretion - Whether the applicant may be deemed to
 be seeking representative rights without recourse to the
 certification process - Whether a finding of a sale should
 be made as a condition precedent to applying section 1(4)
 of the Act.

LOCAL UNION 1687 OF THE INTERNATIONAL BROTHERHOOD OF ELEC-
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 ALLAIRE ELECTRICAL AND MECHANICAL CONTRACTORS (NORTH BAY)
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THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
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Related Employer - S1(4) - Whether related and associated
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 be treated as one for purposes of the Act - Effect of
 Board discretion - Whether outstanding bargaining rights
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THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL, ON
 ITS OWN BEHALF AND ON BEHALF OF: 1. THE CARPENTERS'
 DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF
 OF LOCALS 27, 666, 681, 1133, 1963, 3227, 3233 OF THE

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA:
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506 v. ELMONT CONSTRUCTION LIMITED AND BRUCE N. HUNTLEY
CONTRACTING LIMITED..... (Jun.) p. 341

Religious Exemption - S39(1) - Whether the applicant holds a
belief and conviction based on religious grounds that
justifies exemption from belonging to the respondent
trade union - Whether the applicant motivated by such
religious conviction and belief with respect to repre-
sentation by the respondent trade union - Whether an
order exempting applicant from the union security
provisions of a collective agreement will issue.

N. TERENCE BLACK v. TORONTO TYPOGRAPHICAL UNION NO. 91 v.
COMPUTER TYPESETTING OF CANADA.....(Nov.) p. 832

Representation Vote - Certification - S8(2) - Whether issues
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GRADUATE ASSISTANTS' ASSOCIATION v. GOVERNING COUNCIL OF
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- Effect of allegations of impropriety with respect to securing
members during a trade union's organizational campaign -
Whether a representation vote may be held concurrently with
the investigation of the allegations - Whether to the
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ing the ballot boxes.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
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TICE - WHETHER THE INTERVENER A TRADE UNION FOR PURPOSES OF
APPEARING AT A BOARD PROCEEDING - S12 - EFFECT OF MANAGEMENT
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- EFFECT ON COLLECTIVE AGREEMENTS SUBSEQUENTLY ENTERED INTO
- WHETHER A DISPLACEMENT SITUATION - WHETHER THE INTERVENER
ENTITLED TO PARTICIPATE IN A REPRESENTATION VOTE.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICUL-
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Representation Vote - Effect of an applicant being in a vote position
 - Effect of intervener being in an outright certifiable
 position - S7(2) - Whether Board to exercise its discretion
 to direct a representation vote.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. BESTVIEW HOLDINGS
 LIMITED, CARRYING ON BUSINESS AS BESTVIEW NURSING HOME,
 ORILLIA v. SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED
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Representation Vote - Employee - S1(3)(b) - Whether "supervisory
 functions" more consistent with a "lead hand" than "mana-
 gerial" person - Whether Board will permit its processes
 to be used as a platform for propaganda on matters raised
 in another proceeding but prior to a direction ordering
 a representation vote - Effect of failure of use of an
 "x" by a person casting a ballot - Effect of use of
 another designation.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
 AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. FRUE-
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Representation Vote - Petition - Effect of employer interference
 after the timeliness for filing a timely statement of desire
 has elapsed - Effect on the validity of the petition - S7(4)
 - Effect on the Board's direction ordering a representation
 vote - Whether the true and voluntary wishes of employees will
 be reflected.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICUL-
 TURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. KORLIN LIMITED v.
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Representation Vote - Practice - Challenges to the voters list
 - Effect of agreement of the parties with respect to the
 lists of employees - Whether any changes since the Board's
 decision on the evidence with respect to the duties and res-
 ponsibilities of the disputed persons - Whether a challenge
 in effect a withdrawal from an agreement of the parties.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND
 MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES &
 CANADA LOCAL #F73, TORONTO, ONTARIO v. WARNER BROTHERS
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Representation Vote - S7(2) - Effect of an applicant displacing an incumbent trade union's bargaining rights - Effect of failure of incumbent to file an appearance - Whether the Board to direct "a two-way" vote - Effect of failure to find an abandonment of bargaining rights - Whether a cloud on applicant's representation position notwithstanding evidence indicating more than 65% in the bargaining unit profer the applicant.

GRAPHICS ARTS INTERNATIONAL UNION, LOCAL NO. 28-B, TORONTO v. NCR CANADA LTD. v. GROUP OF EMPLOYEES.....(Dec.) p. 847

Representation Vote - S7(2) - Effect of exercise of Board discretion - Whether the choice on the ballot to extend to applicant, intervener and no trade union.

UNITED GARMENT WORKERS OF AMERICA v. H.D. LEE COMPANY OF CANADA LIMITED v. AMALGAMATED CLOTHING WORKERS OF AMERICA.....(Nov.) p. 812

Representation Vote - S7(4) - Whether undue influence - Whether a violation of the silent period - Whether Board to certify outright - Effect on employees casting ballots.

TORONTO TYPOGRAPHICAL UNION NO. 91 v. SYSTEMS EQUIPMENT LIMITED v. GROUP OF EMPLOYEES.....(Aug.) p. 510

Representation Vote - S8 - Effect of challenges to the lists of employees - Whether it appears that not less than 35% are members of the applicant trade union - Whether the Board to postpone the vote pending the outcome of the challenges to the lists.

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, CLC v. THE ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY .(Dec.)p. 886

Representation Vote - Whether proper notice extended employees of the holding of a representation vote - FORM 6 - Whether notice subsequently given - Whether a miscarriage of justice.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE TORONTO WESTERN HOSPITAL v. CANADIAN UNION OF GENERAL EMPLOYEES.....(Oct.) p. 641

Representation Vote - Whether the ballots indicating a "No" reflect the time and voluntary wishes of employees - Whether a second vote should be directed.

ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES, LOCAL 1704, C.L.C. v. NATIONAL COMMUNICATIONS AND DATA COMPANY LIMITED v. GROUP OF EMPLOYEES.....(Aug.) p. 567

Representation Vote - Whether the circumstances under which a vote was held properly reflected the true wishes of employees - Effect of employer propaganda - Whether a second vote to be directed.

THE HOTEL AND CLUB EMPLOYEE' UNION, LOCAL 299, TORONTO OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (A.F.L.-C.I.O.-C.L.C.) v. CONSTELLATION HOTEL CORPORATION LIMITED..... (Nov.) p. 799

RIGHT OF ACCESS - S10 - SCOPE OF BOARD ORDER PURSUANT TO CONFERRING A TRADE UNION A RIGHT OF ACCESS.

UNITED STEELWORKERS OF AMERICA, LOCAL 958 v. CONSOLIDATED CANADIAN FARADAY LIMITED AND DUMBARTON MINES LTD..... (Jan.) p. 30

RIGHT OF ACCESS - S10 - WHETHER BOARD TO ISSUE A DIRECTION CONFERRING RIGHT TO ACCESS TO THE APPLICANT TO THE EMPLOYER'S PREMISES.

UNITED STEELWORKERS OF AMERICA, LOCAL 958 v. CONSOLIDATED CANADIAN FARADAY LIMITED AND DUMBARTON MINES LTD..... (Jan.) p. 5

Right of Access - S10 - Whether the Board to accede to the request of the applicant trade union.

UNITED STEELWORKERS OF AMERICA v. SELCO MINING CORPORATION LIMITED..... (Nov.) p. 818

Sale of a Business - Bargaining Rights - S55(2)(3) - Effect of the words "until the Board shall otherwise declare" - S37(4) - Whether the Minister has authority to appoint a company nominee to a Board of Arbitration - Effect of a grievance arising before the Board should otherwise declare - S55(5) - Whether a prior Board decision is res judicata.

MAN OF ARAN LTD. v. LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' & BARTENDERS' UNION OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, A.F. OF L., C.I.O., C.L.C..... (Feb.) p. 87

Sale of a Business - Bargaining Rights - S55(3) - Whether a voluntary recognition agreement entered into - S55(11) - Effect of an amalgamation of municipalities - S55(8) - Whether Board to direct a representation vote - S55(10) - Effect of a Board declaration.

AMALGAMATED TRANSIT UNION, DIVISION 107 v. THE CORPORATION OF THE CITY OF MISSISSAUGA, TRANSIT DIVISION..... (Feb.) p. 98

Sale of a Business - Reconsideration - Related Employer - S95(1)
 - Effect of an application for clarification of a Board
decision - Whether the Board to depart from past practice
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of a business transpired between two entities that carry
on related activities within the meaning of the Act - Effect
on the status of employees as of the date of the initial
 application for relief - Effect of employees engaging in a
 lawful strike at the relevant date.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICUL-
 TURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 984, INTER-
 NATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL
 IMPLEMENT WORKERS OF AMERICA (UAW) v. CANAC SHOCK ABSORBERS
 LIMITED v. CANADIAN ACME SCREW & GEAR LIMITED.....(Mar.) p. 131

Sale of a Business - Related Employer - S1(4) - Exercise of
 Board discretion - Whether the applicant may be deemed to
 be seeking representative rights without recourse to the
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 be made as a condition precedent to applying section 1(4)
 of the Act.

LOCAL UNION 1687 OF THE INTERNATIONAL BROTHERHOOD OF ELEC-
 TRICAL WORKERS v. H. ALLAIRE AND SONS COMPANY LIMITED v.
 ALLAIRE ELECTRICAL AND MECHANICAL CONTRACTORS (NORTH BAY)
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Sale of a Business - S55(1)(a)(b) - Effect of a sale between
 closely held companies - Whether a presumption of a sale
 arises - Effect on the onus to disprove the sale of a
 business - Whether merely a sale of assets - Effect of
 nature of the undertaking subject to the Board inquiry
 in the disposition of the issue.

LOCAL UNION 633 AND LOCAL UNION 175 CANADIAN FOOD AND
 ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS
 AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v.
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Sale of a Business - S55(1)(a)(b) - Effect of "good will" in
 determining whether "a sale" transpired - S55(5) - Whether
 a change in character of the business as a result of the
 sale.

WINCO STEAK N' BURGER RESTAURANTS LIMITED v. THE HOTELS,
 CLUBS, RESTAURANTS, TAVERNS EMPLOYEES' UNION, LOCAL 261,
 OTTAWA, ONTARIO, CHARTERED BY THE HOTEL AND RESTAURANT
 EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L.-
 C.I.O.....(Nov.) p. 788

SALE OF A BUSINESS - S55(1)(a)(b) - RETAIL SUPERMARKETS - WHETHER A DISPOSITION WITH RESPECT TO LEASEHOLD PROPERTY AND CERTAIN ASSETS AMOUNTS TO A SALE OF A BUSINESS - EFFECT OF THE PREMISES OF THE PREDECESSOR BEING CONSTRUED AS BEING "THE BUSINESS" FOR PURPOSES OF S55 - EFFECT OF THE PREDECESSOR SURRENDERING THE LEASE TO THE ORIGINAL LANDLORD - EFFECT OF THE SUCCESSOR MERELY TAKING OVER THE PREDECESSORS PREMISES - WHETHER A MERE SALE OF ASSETS OF THE PREDECESSOR.

LOCAL UNION 633 AND LOCAL UNION 175 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. SUNNYBROOK FOOD MARKET (KEELE) LIMITED v. THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED v. LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR..... (Jan.) p. 47

Sale of a Business - S55(1)(a)(b) - Whether a disposition of assets coincident with union's organizational campaign with the predecessor company raises an inference of a sale of a business - Effect of employees of the predecessor not desirous of union representation seeking employment with the successor company.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804 v. RALPH FORD ELECTRICAL CONTRACTORS LIMITED, D. WILSON ELECTRICAL LTD. AND 275247 ONTARIO LIMITED v. GROUP OF EMPLOYEES..... (Jun.) p. 388

Sale of a Business - S55(11) - Effect of an amalgamation of municipalities - Whether the exercise of Board discretion under S55(8) an appropriate remedy - Whether the Board will exercise its discretion.

THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 636 v. THE CORPORATION OF THE CITY OF MISSISSAUGA v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 66..... (Mar.) p. 184

Sale of a Business - Trade Union - Effect of distinction between a local and a parent trade union - Whether the local has status to apply where not the bargaining agent of the employees affected by an alleged "sale" - Whether a transfer of bargaining rights from the parent to the local trade union.

THE TORONTO MOTION PICTURE PROJECTIONISTS UNION LOCAL #173 INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA v. T W C TELEVISION LIMITED v. GUNNAR DOMANDER.. (Nov.) p. 816

S79 - Constitutional Law - Jurisdiction - Duty of Fair Representation - Whether the Board may entertain a complaint alleging violation of S60 - Effect of nature of the undertaking - Whether it falls under the provisions of S92(10)(a) of The B.N.A. Act.

DAVID BEATON v. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 v. CONSOLIDATED FASTFRATE LTD.....(May.) p. 269

S79 - Discharge For Union Activity - Employee - S1(3)(b) - "charge technologists" - Effect of "titles" in determining the exercise of managerial functions - Effect of performing bargaining unit work a majority of the time - Effect of impact of isolated incidents of exercising supervisory duties - Whether duties of "charge technologists" analogous to functions of a "lead hand" or "a working foreman" - S61 - S58(a) - Whether in any event a person exercising managerial functions has rights under the L.R. Act with respect to trade union activity - S80 - Whether a restrictive or expansive interpretation attached to the word "person".

CSAO NATIONAL (INC.) v. OTTAWA GENERAL HOSPITAL.....(Oct.) p. 714

S79 - Discharge for union activity - S58 - Effect of an alternative remedy under arbitration - Whether the aggrieved "quit" in any event - Effect of allegation of discharge for union activity - S64(1) - Whether an unconditional application ... to return to work during a lawful strike - Whether the employee was engaged in the lawful strike at the time of the application to return to work - Effect of an application made after the termination of the strike - Whether section speaks in the present tense - Effect of INTERPRETATIONS ACT R.S.O. 1970 c225 s4.

CANADIAN TEXTILE AND CHEMICAL UNION v. ARTISTIC WOODWORK CO. LIMITED.....(Mar.) p. 157

S79 - Discharge for union activity - S58(a) - Effect of delay in launching the proceedings-Whether the respondent prejudiced - S79(4) - Effect on compensation directed.

INTERNATIONAL WOODWORKERS OF AMERICA v. DECOR WOOD SPECIALTIES LIMITED.....(Mar.) p. 136

S79 - Discharge For Union Activity - S58(a) - Whether a case in support of the allegations made out - Effect of onus of proof in complaints alleging violation of an unfair labour practice provision of the Act.

INTERNATIONAL WOODWORKERS OF AMERICA v. BOYLE-MIDWAY (CANADA) LIMITED..(Sep.) p. 573

- S79 - Discharge for Union Activity - S58(a) - Whether contracting of bargaining unit work the cause for termination of employees' services - Whether decision to contract out prompted by an anti-union animus - Effect of business considerations in making the decision.

SERVICE EMPLOYEES UNION, LOCAL 204 v. SWISS CANADIAN MANAGEMENT COMPANY LIMITED, AND YORK CONDOMINIUM CORPORATION
NO. 42.....(May.) p. 287

- S79 - Discharge For Union Activity - S58(a) - Whether discharge for participation in a lawful strike - Effect of temporary nature of employment status - Whether failure to re-employ a facture in establishing the grievor's case - Effect of failure to satisfy evidentiary burden.

WALTER C. SARICH v. CORPORATION OF THE CITY OF SAULT STE. MARIE, ONTARIO.....(Aug.) p. 523

- S79 - Discharge for union activity - S58(a) - Whether grievor qualified to perform functions for which engagement as an employee was premised - Whether the real cause for the discharge.

FEDERATION OF CHILDREN'S AID STAFFS v. CATHOLIC CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO.....(Apr.) p. 225

- S79 - Discharge for Union Activity - S58(a) - Whether the Board is satisfied on the balance of probabilities that "one of the reasons for the discharge was the union activity of the complainant - Effect of union activity being only a contributing factor to the discharge.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. DELHI METAL PRODUCTS LIMITED.....(Jul.) p. 450

- S79 - Discharge for union activity - S58(a) - Whether the onus shifted to justify a reasonable explanation by the employer - Effect of lay-off for reasons of a unavailability of work occasioned by a downtrend in anticipated sales.

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- S79 - Discharge for Union Activity - S58(a) - Whether union activity need be the "sole" reason for the discharge in order to satisfy the Board of a violation - Whether union activity played a party however proximate in the discharge - Effect of immediacy of the discharge after the alleged union activity.

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- S79 - Duty of Fair Representation - DUAL UNIONISM - Effect of failure to adduce compellable circumstantial or direct evidence in support of the allegations - S60 - Effect of failure to file a grievance with respect to the discharge from employment - Whether trade union in violation of duty of fair representation - S38(2) - Effect of deception by the grievor in holding two jobs on false pretences - Whether credibility a cogent factor in assessing the grievors evidence - Effect on "conspiracy theory" - Effect of failure to file particulars - Whether the Board to permit an amendment to the allegations.

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- S79 - Duty of Fair Representation - Jurisdiction - S60 - "employees in a bargaining unit" - Whether members in good standing may hold the trade union representative accountable through the duty of fair representation for the manner in which it operates "the hiring hall" provisions of a collective agreement - Effect of the nature of a union security clause - Whether members need be employees in a bargaining unit."

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- S79 - Duty of Fair Representation - Lay-off - Effect of trade union adhering to past policy practice in placing members on jobs in accordance with the union hiring hall provision contained in a collective agreement - S60 - Whether trade union reaction to lay-off of the grievor in violation of its duty of fair representation.

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- S79 - Duty of Fair Representation S60 - Effect of a Board decision deferring a dispute to arbitration - Effect of subsequent events rendering arbitration superfluous - Whether continuance of the arbitration process an "academic exercise" - Whether the Board to reconsider its decision to defer to arbitration.

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- S79 - Duty of Fair Representation - S60 - Effect of failure of the complainant to adduce evidence in support of allegations of a breach by the respondent union of its duty of fair representation - Whether a prima facie case.

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- S79 - Duty of Fair Representation - S60 - Effect of lay-off under the terms of the collective agreement - Whether offer by the trade union to proceed to arbitration on a seniority grievance on the contingency that the grievor pay the expenses of the arbitration an abuse of the duty of fair representation - Effect of past precedent of settling matters relating to seniority.

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- S79 - Duty of Fair Representation - S60 - Effect of negotiating a retroactive wage clause in a collective agreement - Effect of provision disentitling a person whose services were terminated before the collective agreement was executed - Whether respondent acting arbitrarily or discriminatorily with respect to persons whose services were terminated - Whether a duty of fair representation owed at the material time of the termination of the complainant's services.

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- S79 - Duty of Fair Representation - S60 - Effect of respondent trade union entering into a collective agreement subsequent to the facts and circumstances giving rise to the complaint - Whether at all material times the respondent owed a duty of fair representation to the complainant.

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- S79 - Duty of Fair Representation - S60 - Effect of taking grievance to the door of arbitration by appointing a nominee to an arbitration board - Effect of appointment made in order to preserve time limits under the collective agreement - Effect of a subsequent meeting of the rank and file members refusing to authorize arbitration of the grievance - Whether withdrawal of the grievance a violation of the duty of fair representation.

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- S79 - Duty of Fair Representation - S60 - Whether a failure to be invited to attend union meetings with respect to disposition of discharge grievance evidence of bad faith representation - Effect of settlement of the grievance in light of a weak case for arbitration - Whether a mistake with respect to the appointment of a union nominee to an arbitration board is evidence of bad faith.

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- S79 - Duty of Fair Representation - S60 - Whether failure by the respondent to invite aggrieved employee to union meeting where decision on disposition of the grievance was resolved is a violation of the duty of fair representation - Effect of suspended status of the aggrieved as a union member.

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- S79 - DUTY OF FAIR REPRESENTATION - S60 - WHETHER FAILURE TO EXTEND NOTICE TO THE AGGRIEVED WITH RESPECT TO THE UNION MEETING WHERE DISPOSITION OF THE GRIEVANCE WAS RESOLVED - WHETHER AN INCURSION INTO THE INTERNAL AFFAIRS OF A TRADE UNION - WHETHER FAILURE TO EXTEND NOTICE ARBITRARY OR DISCRIMINATORY WITH RESPECT TO A TRADE UNION'S DUTY OF FAIR REPRESENTATION.

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- S79 - Duty of Fair Representation - S60 - Whether handling of
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- S79 - Duty of Fair Representation - S60 - Whether respondent
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- S79 - Duty of Fair Representation - S60 - Whether trade union
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- S79 - Duty of Fair Representation - S60 - Whether trade
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- S79 - Duty of Fair Representation - S79(1)(c) - S79(4)(c) -
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- Whether the Board will exercise its discretion to defer
to the forum of arbitration to resolve the complainant's
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and employer parties to the collective agreement - Whether the complainants are under a duty to exhaust remedies - Effect of an arbitration award on the continued viability of the complainant's allegations of a violation of section 60 - Whether the Board to defer to arbitration.

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S79 - Employee - Whether section 80 reverses the position of the courts' in that the word "person" is confined to the word "employee" - Whether the enactment of section 80 affects the meaning of "person" for purposes of section 58 - Whether the word "purposes" in section 80 is to be construed broadly to include other unfair labour practice provisions aside from section 71 - Whether the word "person" in section 61 is intended to be encompassed by the word "purposes in section 80.

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S79 - Evidence - S70(2) - Whether a change in working conditions at a time prohibited by the Act without the consent of a trade union applicant is contemplated by S70(2) - Whether a change in working conditions in the circumstances is part of a past practice and pattern of the respondent employer - Weight to be attached to statistics filed by the respondent to Statistics Canada - Whether employees consent to the changes constitute a waiver of rights - Whether the trade union the appropriate bargaining agent - Effect of employee participation on compensation - Whether a violation of the Act in light of the mischief of S70(2).

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